BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 09 -01

MITSUI O.S.K. LINES LTD.

COMPLAINANT

v.

GLOBAL LINK LOGISTICS, INC., OLYMPUS PARTNERS, OLYMPUS GROWTH FUND III, L.P., OLYMPUS EXECUTIVE FUND, L.P., LOUIS J. MISCHIANTI, DAVID CARDENAS, KEITH HEFFERNAN, CJR WORLD ENTERPRISES, INC. AND CHAD J. ROSENBERG

RESPONDENTS

RESPONDENTS CJR WORLD ENTERPRISES, INC. AND CHAD J. ROSENBERG'S RESPONSE TO MITSUI O.S.K. LINES, LTD.'S PROPOSED FINDINGS OF FACT

Pursuant to the October 16, 2012 Order of the Administrative Law Judge and Rule 221 of the Commission's Rules of Practice and Procedure, Respondents CJR World Enterprises, Inc. ("CJRWE") and Chad J. Rosenberg (collectively, "CJR Respondents") hereby object and respond to Mitsui O.S.K. Lines, Ltd.'s ("MOL") Proposed Findings of Fact as follows:

CJR RESPONDENTS' OBJECTIONS AND RESPONSES TO MOL'S PROPOSED FINDINGS OF FACT

The Action:

1. On May 5, 2009, MOL commenced an action against Respondents Global Link Logistics, Inc.; Olympus Partners; Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; Olympus Executive Fund, L.P.; Louis J. Mischianti; David Cardenas, Keith Heffernan,

CJR World Enterprises, Inc. and Chad J. Rosenberg. (Complaint, annexed hereto as Exh. D (App. 985)).

RESPONSE: The CJR Respondents admit paragraph 1.

2. Respondents can be divided into three (3) distinct groups: (a) Global Link Logistics, Inc., referred to as "Global Link"; (b) Olympus Partners; Olympus Growth Fund III, L.P. ("OGF"); Olympus Executive Fund, L.P. ("OEF"); Louis J. Mischianti; David Cardenas and Keith Heffernan, collectively referred to as "Olympus" or "Olympus Respondents"; and (c) CJR World Enterprises, Inc. and Chad J. Rosenberg, collectively referred to as "CJR" or "CJR Respondents." (Complaint (Exh. D) (Appx. at 985-87)).

RESPONSE: The CJR Respondents admit paragraph 2.

3. Respondents, jointly and severally, violated Sections 10(a)(1) and 10(d)(1) of the Shipping Act, 46 U.S.C. §§ 41102(a), 41102(c), as well as 46 C.F.R. § 515.31(c) by engaging in false and fraudulent practices and conduct, referred to as "split routing." (Complaint and Amended Complaint, annexed hereto as Exhs. D and F (App. 985-84 and 999-1008, respectively)).

RESPONSE: The CJR Respondents deny paragraph 3 for the various reasons set forth on pages 2 through 32 of their Brief in Response to MOL's Opening Submission (the "CJR Respondents' Brief") and based on the evidence discussed therein.

The Parties:

4. At all material times, MOL was an ocean common carrier that maintained a published tariff in accordance with the Shipping Act of 1984, as amended, and FMC regulations. Said tariff contained a sample copy of MOL's Bill of Lading as required by FMC regulations.

RESPONSE: The CJR Respondents do not dispute paragraph 4.

5. Respondent Global Link Logistics, Inc. ("Global Link") was at all material times an ocean transportation intermediary ("OTI"), licensed with the Federal Maritime Commission and operating as a non-vessel operating common carrier ("NVOCC"). (Global Link's Verified Answer and Affirmative Defenses to Mitsui O.S.K. Lines Ltd.'s Complaint, Counterclaim and Cross Claims ("Global Link Answer") at 2, annexed hereto as Exh. N (App. 1145), and Order Denying Appeal of Olympus Respondents, Granting in Part Appeal by Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motions to Dismiss ("Order Denying Appeal") at 3, annexed hereto as Exh. H (App. 1032)).

RESPONSE: The CJR Respondents admit that Global Link Logistics, Inc. ("GLL") was an OTI, licensed with the Federal Maritime Commission and operating as an NVOCC until June 7, 2006. On June 7, 2006, CJRWE sold its shares of GLL to the current

owners. The CJR Respondents do not have information or knowledge sufficient to respond to MOL's allegations with respect to GLL's activities following the sale.

6. Olympus Respondents were owners, officers and/or directors of Global Link during the period when the alleged violations of the Shipping Act occurred, and benefited from concealing the existence of "split routing" scheme. (Transcript of Deposition of Chad Rosenberg dated October 7, 2008 ("Rosenberg Dep.") at page 29, lines 9-21, annexed hereto as Exh. O (App. 1171); Order Denying Appeal (Exh. H) at 4 (App. 1033); and Global Link Voluntary Disclosure dated May 21, 2008 ("Global Link Voluntary Disclosure") at ¶ 14, annexed hereto as Exh. C (App. 116)).

RESPONSE: The CJR Respondents object to MOL's reliance on GLL's Voluntary Disclosure (the "Voluntary Disclosure") as evidence against the CJR Respondents in this case. The Voluntary Disclosure is an out-of-court statement being offered for its purported truth and is thus inadmissible hearsay. To the extent MOL contends the Voluntary Disclosure is admissible as an admission by GLL, the Voluntary Disclosure is still not admissible against the CJR Respondents because one Respondent's admission cannot bind another Respondent. *See, e.g.*, *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.2d 514, 519 n.9 (10th Cir. 1994) (*citing Leeds v. Marine Ins. Co. of Alexandria*, 15 U.S. (2 Wheat.) 380, 381, 4 L. Ed 266 (1817) ("[T]he answer of one defendant cannot be used as evidence against his co-defendant")); *Riberglass, Inc. v. Techni-Glass Industries, Inc.*, 811 F.2d 565, 566-67 (11th Cir. 1987) ("[T]he deemed admissions of his codefendants cannot bind Morris where he actually responded to Plaintiff's requests in a timely and

legally sufficient manner" (internal citations omitted)); 4 *Wigmore Evidence*, § 1076 at 156 (Chadbourn rev. 1972) ("[T]he admissions of one co-plaintiff or codefendant are not receivable against another, merely by virtue of his position as a coparty in the litigation" (emphasis omitted)); 31 *C.J.S. Evidence*, § 318 at 812 ("An admission of one party is not binding on, or evidence against, a coparty").

The CJR Respondents also object to MOL's reliance on the Voluntary Disclosure on the grounds that it was filed by GLL's current owners in an effort to manufacture favorable evidence for the Claimants in the arbitration styled *Global Link Logistics, Inc., et al. v. Olympus Growth Fund III, L.P., et al.*, American Arbitration Association, Case No. 14 125 Y 01447 07 (the "Arbitration").

The CJR Respondents also object to paragraph 6 on the grounds that the deposition of Mr. Rosenberg which is cited as support for paragraph 6 was taken in the Arbitration and is not admissible in this proceeding. Mr. Rosenberg's out-of-court statements at his deposition in the Arbitration are hearsay. Prior sworn testimony may be admissible as an exception to the hearsay rule but only when the declarant is unavailable. *See* Fed. R. Evid. 804(b)(1); *see also Walker v Pepsi-Cola Bottling Co.*, Nos. Civ. A. 98-225-SLR, 99-748-JJF, 2000 WL 1251906, at *5 (D. Del. August 10, 2000) (holding that transcript of "prior sworn testimony in an arbitration hearing" was "hearsay and not admissible . . . ."). As a party to this proceeding, Mr. Rosenberg was clearly available. His prior testimony in the Arbitration is thus inadmissible in this proceeding.

The CJR Respondents also object to MOL's reliance on Mr. Rosenberg's deposition on the grounds that MOL misstates his testimony: Mr. Rosenberg did not

testify that GLL concealed the existence of the practice of split routing in the testimony cited.

Subject to these objections, the CJR Respondents admit that the Olympus Respondents were owners, officers and/or directors of GLL prior to June 7, 2006. The CJR Respondents deny that the practice of split routing benefitted GLL or damaged MOL, for the reasons set forth in the CJR Respondents' Brief.

7. CJR Respondents were owners, officers and/or directors of Global Link during the period when the alleged violations of the Shipping Act occurred. They also benefited from the split routing scheme. (Order Denying Appeal (Exh. H) at 3 and 4 (App. 1032 and 1033)).

RESPONSE: The CJR Respondents admit that CJRWE was an owner of GLL and Mr. Rosenberg was an officer and director of GLL prior to June 7, 2006. The CJR Respondents deny that the practice of split routing benefitted GLL or damaged MOL, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

8. From 2003 through 2006, OGF owned 74.9% of the shares of Global Link Holdings, Global Link's parent. From 2003 through 2006, OEF owned .49% of the share of Global Link Holdings, and CJR Respondents owned 20.64% of Global Link Holdings. (Global Link Answer (Exh. N) at 14-15, ¶ 6 (App. 1057-58) and Order Denying Appeal (Exh. H) at 33, fn. 4 (App. 1062)).

RESPONSE: The CJR Respondents admit that from 2003 through June 7, 2006, OGF owned 74.9% of the shares of Global Link Holdings, OEF owned .49% of the share of Global Link Holdings, and CJRWE owned 20.64% of Global Link Holdings. The CJR Respondents deny that Mr. Rosenberg personally owned shares of Global Link Holdings. The materials cited by MOL do not support that assertion.

9. As a licensed NVOCC, Global Link is obligated to comply with all applicable rules and regulations of the FMC, including Sections 10(a)(1) and 10(d)(1) of the Shipping Act and Commission regulation 46 C.F.R. Sec. 515.1(e) [sic]. (Order Denying Appeal (Exh. H) at 13 and 32 (App. 1042 and 1061) and Global Link's Amended Statement of Claim in Arbitration dated October 17, 2007 ("Global Link Amended Statement") at ¶¶ 49 and 68 (App. 1448 and 1457), annexed hereto as Exh. AG ("Global Link believes it is material compliance with all known federal, state, and local regulations. Global Link has procedures in place to ensure compliance with such regulations.")).

RESPONSE: The CJR Respondents do not dispute paragraph 9. The CJR Respondents show further that no violations of the Shipping Act or any related regulations occurred, for the reasons set forth in the CJR Respondents' Brief.

10. As officers and directors of Global Link, the Respondents Louis Mischianti, David Cardenas, Keith Heffernan and Chad Rosenberg are charged with the responsibility of ensuring that Global Link, a licensed NVOCC, complied at all relevant times, with the rules and regulations under the Shipping Act. (Global Link Amended Statement (Exh. AG) at ¶¶ 49 and 68 (App. 1448 and 1457)).

RESPONSE: The CJR Respondents object to paragraph 10 on the grounds that it is not supported by any evidence. The purported "evidence" on which MOL relies is GLL's Amended Statement of Claim in the Arbitration. However, GLL's Amended Statement of Claim is of no evidentiary value in this proceeding (and was not of evidentiary value in the Arbitration).

GLL's Amended Statement of Claim is also hearsay. *See* Fed. R. Evid. 801, 802. To the extent MOL contends the Amended Statement of Claim is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth in paragraph 6 with respect to the Voluntary Disclosure.

The CJR Respondents also object to paragraph 10 on the grounds that the allegations of GLL on which MOL relies are not relevant to MOL's claims.

The Service Contracts:

11. MOL began doing business with Global Link on or about May 11, 2004. (Global Link Answer (Exh. N) at 4, ¶ A (App. 1147)).

RESPONSE: The CJR Respondents admit paragraph 11.

12. [Paragraph 12 of MOL's Proposed Findings of Fact is redacted in MOL's Public Version of its Opening Submission.]

RESPONSE: The CJR Respondents admit paragraph 12.

13. [Paragraph 13 of MOL's Proposed Findings of Fact is redacted in MOL's Public Version of its Opening Submission.]

RESPONSE: The CJR Respondents admit paragraph 13.

14. [Paragraph 14 of MOL's Proposed Findings of Fact is redacted in MOL's Public Version of its Opening Submission.]

RESPONSE: The CJR Respondents deny that GLL had the opportunity to negotiate rates to any inland destination required by its customers. During the period of time that CJRWE was an owner of GLL, MOL was often reluctant to engage in negotiations to add door points to the parties' service contract and MOL encouraged GLL to engage in the practice of split routing using regional points. (Declaration of Chad Rosenberg, dated February 26, 2013 ("Rosenberg Dec."), at ¶¶36 -52 annexed to the CJR Respondents' Brief as Exhibit A) (CJR Respondents' Appendix ("CJR App."), at pp. 6-9); (*see also* Declaration of Jim Briles, dated February 26, 2013 ("Briles Dec."), at ¶¶ 8-26, annexed to the CJR Respondents' Brief as Exhibit B) (CJR App., at pp. 14-16).

15. The service contracts entered into between MOL and Global Link were subject to various tariff rules, including a rule relating to diversion (defined as a change in the original billed destination). At all relevant times, MOL's tariff rules required shippers to request any diversion of cargo in writing and required the payment of a diversion charge as well as the difference in price between the original and new destinations. (Global Link

Answer (Exh. N) at 5, ¶ D (App. 1148)). MOL's tariff rule on diversion which is incorporated by reference in these service contracts is attached hereto as Exh. CA (App. 1901-36).

RESPONSE: The service contracts and MOL's tariff rules speak for themselves. Further, regardless of the service contracts and tariff rules, during the period of time that CJRWE was an owner of GLL, MOL encouraged GLL to engage in the practice of split routing (i.e., to route shipments to actual destinations that were different than the destination in the master bill of lading). (Rosenberg Dec., at ¶¶ 36-52) (CJR Exh. A) (CJR App., at pp. 6-9); (Briles Dec., at ¶¶ 8-26) (CJR Exh. B) (CJR App., at pp. 14-16). As such, MOL is estopped by its course of conduct from claiming that GLL (or the other Respondents) are obligated to pay diversion fees. *See generally, S. Life Ins. Co. v. Citizens Bank of Nashville*, 91 Ga. App. 534, 538, 86 S.E.2d 370, 374 (1955) (holding that a party was estopped from complaining that the other had not complied strictly with the relevant contract and reasoning that "[w]aiver results from a relinquishment of a known right, and where, by a course of conduct, one leads another to believe that he will not insist upon the strict terms of the contract, he will not be heard to complain because the other contracting party relies upon his acquiescence as evidence by a course of conduct in similar situations.").

16. From 2004 through at least 2006, Respondents engaged in a systematic scheme to defraud MOL and obtain ocean transportation at rates and charges different and lower than the applicable service contract and/or tariff rates by booking cargo to false inland

destinations while arranging to have the cargo delivered by its preferred truckers to different inland destinations. (Global Link Answer (Exh. N) at 5, ¶ E (App. 1148) and Global Link Voluntary Disclosure (Exh. C) at ¶¶ 8, 10-18 (App. 111, 113-20)).

RESPONSE: The CJR Respondents deny that GLL engaged in a scheme to defraud MOL. The CJR Respondents further object to paragraph 16 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents also object to MOL's reliance on GLL's Answer as any admissions by GLL in its Answer are not binding on the CJR Respondents for the same reasons that the Voluntary Disclosure is not binding on the CJR Respondents. Responding further, the CJR Respondents admit that GLL engaged in the practice of split routing, but did so with MOL's knowledge, approval and encouragement. (Rosenberg Dec., at ¶¶ 36-52) (CJR Exh. A) (CJR App., at pp. 6-9); (Briles Dec., at ¶¶ 4, 8–26, 40-46) (CJR Exh. B) (CJR App., at pp. 13-16, 19-20).

Global Link voluntarily discloses an [ALLEGED] illegal scheme known as "split routing":

17. On May 21, 2008, Global Link voluntarily disclosed to the Commission that since at least 2004 it had engaged in a methodical and illegal enterprise known as "split routing" which "was based on falsely routing cargoes . . . ." (Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113-14)).

RESPONSE: The CJR Respondents admit that GLL submitted the Voluntary Disclosure to the Commission. The CJR Respondents show further that the Voluntary Disclosure is

inadmissible against the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

18. Global Link referred to this practice with various names including "splits," "split routing," "split shipping," "mis-booking," and "re-routing." (CJR Respondents' Verified Answer and Affirmative Defenses to Amended Complaint dated July 9, 2010 ("CJR Respondents Answer") at 8, ¶ E, annexed hereto as Exh. P (App. 1194) and Global Link Answer (Exh. N) at 5, ¶ E (App. 1148)).

RESPONSE: The CJR Respondents admit that the practice of split routing which GLL engaged in prior to June 7, 2006 was sometimes referred to as "splits," "split routing," "split shipping," "mis-booking," and "re-routing."

19. Global Link admitted that "split routing" was carried out as follows:

> . . . Pursuant to the "split delivery" procedures, shipments from Asia would be consigned to Hecny [or later to Global Link] on the ocean carrier's master bill of lading to inland points in the United States that were not the actual locations where Global Link's customers were located or to which their shipments were to be delivered. Rather, these points were chosen by Global Link because the transportation rates to them were cheaper than to the actual delivery points. **The destination shown on the ocean carrier's master bill of lading would be the false destination chosen for its low transportation rate. The destination shown on the house bill of lading would be the true delivery location.**

(Global Link Voluntary Disclosure (Exh. C) at ¶ 8 and ¶ 4 (App. 111-12 and 109-10) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 19 on the grounds that the Voluntary Disclosure is inadmissible against the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

20. Global Link further described the "split routing" as:

> **The "split delivery" scheme was based on falsely routing cargoes** and worked as follows. Global Link, primarily Jim Briles and his staff, would analyze service contracts to identify particularly low-rated points. Global Link would then instruct Hecny [and later its own staff] to book shipments to those low-rated points and show them as destinations on the ocean carrier's master bills of lading. The house bills of lading, however, would show the actual destinations where Global Link's customers were located. **The shipments would then be transported by the ocean carrier to the port or rail ramp for the booked—but fictional—destination where the container would be picked up by a motor carrier for the final leg of the transportation movement to the actual destination.** It was also important for the false routing scheme that Global Link be able to designate its "preferred truckers" to be used by the ocean carriers. This is because it was necessary to find motor carriers who would be willing to deliver the ocean containers to a different destination than the one shown on the master bill of lading and the carrier's freight release. . . .

(Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 20 on the grounds that the Voluntary Disclosure is inadmissible against the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

21. In addition to causing master bills of lading to be issued with false final destinations, Global Link also arranged to issue two (2) sets of delivery orders for each shipment. This

practice was confirmed by the testimony of Dee Ivy, an employee of Global Link, who testified as follows:

Q. Okay. Are you familiar with a practice that's called split shipments or rerouting in this case?

A. Yes.

Q. What do you understand it to mean?

A. Split shipments for Global Link was when we would create a delivery order, two delivery orders actually. **One delivery order would go to the steamship line that showed the actual delivery location per the booking, and then a second delivery order would be sent to our trucker with the delivery address of our actual customer.**

So a split shipment to us meant that we had a shipment coming in that was going—where my customer was not where it was booked with the steamship line.

Q. Okay. Is a delivery order different from a bill of lading?

A. Yes.

Q. What is a delivery order?

A. A delivery order is the actual delivery instructions to the trucker or to the carrier to say this container is to be delivered to XYZ.

Q. Is that created by GLL?

A. Yes.

(Deposition of Dee Ivy dated August 21, 2008 ("Ivy Dep.") at page 11, line 21-page 12, line 21, annexed hereto as Exh. V (App. 1248) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 21 on the grounds that the deposition of Dee Ivy in the Arbitration is not admissible in this proceeding. Ms. Ivy's out-of-court statements at her deposition in the Arbitration are hearsay. Prior sworn

testimony may be admissible as an exception to the hearsay rule *only when* the declarant is unavailable. *See* Fed. R. Evid. 804(b)(1); *see also Walker v. Pepsi-Cola Bottling Co.*, Nos. Civ. A. 98-225-SLR, 99-748-JJF, 2000 WL 1251906, at *5 (D. Del. Aug. 10, 2000) (holding that transcript of "prior sworn testimony in an arbitration hearing" was "hearsay and not admissible . . . .").

To establish unavailability under 804(b)(1), the proponent of the hearsay statement must demonstrate that the declarant is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance . . . by process or other reasonable means. *See* Fed. R. Evid. 804(a)(5); *Williams v. United Diary Farmers*, 188 F.R.D. 266 (S.D. Ohio 1999). Thus, the mere absence of the declarant from the hearing, alone, does not establish unavailability. *See id.*; Fed. R. Evid. 804(a)(5) Advisory Committee Notes. Rather, the proponent must also establish unavailability. *See id.* Reasonable efforts include service of a subpoena on the declarant to testify at the hearing, attempts to depose the declarant, or some other showing of a good faith effort to secure the declarant's attendance, such as witnesses explaining why the declarant is unavailable to testify. *See id.* (rule designed primarily to require that an attempt be made to depose a witness, as well as to seek his attendance as a precondition to the witness being deemed unavailable); *Simulnet East Ass'n v. Ramada Hotel Operating. Co.*, Nos. 95-16339, 95-16340, 1997 WL 429153, at *6 (9th Cir. July 31, 1997) ("Where no attempt has been made to depose a witness, that witness cannot be said to be unavailable."); *Carlisle v. Frisbie Memorial Hosp.*, 888 A.2d 405 (N.H. 2005) (rejecting admissibility of deposition testimony because defendants did not adequately show that they could not procure the witness to testify).

MOL made no efforts to depose Ms. Ivy in this proceeding despite MOL's ability to request a subpoena from the Commission to take Ms. Ivy's deposition. MOL has thus failed to demonstrate that Ms. Ivy is unavailable. Her deposition is thus inadmissible.

MOL may contend that statements in Ms. Ivy's deposition are admissible as admissions by GLL. However, as an employee of GLL without any managerial or supervisory duties or any other grant of authority from GLL, her statements or opinions do not bind GLL. *See MCI Communications Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1143 (7th Cir. 1983) ("[O]pinions of such employees without management responsibility are not properly considered to be admissions of the corporation . . . ." (*citing United States v. Siemens Corp.*, 621 F.2d 499 (2d Cir. 1980)). Furthermore, even if Ms. Ivy's statements are admissions by GLL, any such alleged admissions are not admissible against the CJR Respondents because the CJR Respondents cannot be bound by any admission of GLL for the reasons set forth in the CJR Respondents' response to paragraph 6.

22. The Arbitration Partial Final Award further delineated the differences between the two (2) sets of delivery orders as follows:

> Just as there were two bills of lading, there were separate delivery orders: a "truckline" delivery order showing the actual destination, and a "shipline" delivery order showing the false destination used in the master bill of lading.

(Exh. A (App. 8, fn. 11)).

RESPONSE: The CJR Respondents object to paragraph 22 on the grounds that the Partial Final Award in the Arbitration (the "Award") is inadmissible. The Award is an out of court statement by the Panel in the Arbitration and is thus inadmissible hearsay.

MOL may argue that the CJR Respondents are collaterally estopped by the Award. However, collateral estoppel does not apply. MOL was not a party or related to a party in the Arbitration. "For a court to apply nonmutual collateral estoppel the issue at stake (1) must be identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated; and (3) the determination in the prior proceeding must have been a crucial and necessary part of the judgment in the earlier action." *Johnson v. F.B.I.*, No. CIV.A. 2:06CV463-MHT, 2006 WL 2190711 (M.D. Ala. Aug. 2, 2006) (*citing A.G. Taft Coal Co. v Connors*, 829 F.2d 1577, 1580 (11th Cir. 1987); *Hart v. Yamaha-Parts Distributors, Inc.*, 787 F.2d 1468, 1473 (11th Cir.1986)).

MOL has failed to show collateral estoppel applies. The Arbitration concerned factual and legal issues that are not at issue in or applicable to this proceeding. Specifically, the Arbitration concerned whether GLL was damaged as a result of alleged "fraudulent conduct by certain of the Respondents and breaches of contractual representations in connection with Claimants' acquisition of Global Link . . . pursuant to a Stock Purchase Agreement . . . ." (Arbitration Partial Final Award) (MOL's Ex. A, at p. 1) (MOL's Appendix ("MOL's App."), at p. 1). Claims arising from the sale of GLL are in no way at issue in this proceeding.

23. The "split routing" scheme did not end with the issuance of false transportation documents. Full implementation of the "split routing" scheme involved use of the ocean carrier's trucking payment and was explained by Global Link as follows:

> . . . [O]cean carriers establish trucking allowances to compensate motor carriers for the drayage of containers from ports or rail ramps to final destinations. **If the trucking allowance for the fictional destination would not cover the trucking move to the actual destination, Global Link would pay the motor carrier the difference. To avoid this, which would obviously reduce Global Link's profit on these shipments, Global Link tried to find cheap destination points with high trucking allowances from the ocean carriers.** When the cargo arrived in the United States, Global Link would create two delivery orders. One delivery order, entitled "Shipline," would be sent to the ocean carrier showing the name of the preferred trucker and the fictional destination from the ocean carrier's master bill of lading. The other delivery order, called the "Truckline," would be sent to the motor carrier. The Truckline delivery order would be identical to the Shipline order except for the destination, which would be the actual destination to which the motor carrier would deliver the container.

(Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 114)).

RESPONSE: The CJR Respondents object to paragraph 23 on the grounds that the Voluntary Disclosure is inadmissible as to the CJR Respondents for the reasons set forth in the CJR Respondents' Brief to paragraph 6. The CJR Respondents show further that MOL did not seek to profit on the trucking portion of shipments. (Rosenberg Dec., at ¶ 59) (CJR Exh. A) (CJR App., at p. 10) (*see also* Deposition of Paul McClintock ("McClintock Dep.") at pp. 13:22-14:6, 65:15-18, 88:10-14, 264:15-265:10, annexed to the CJR Respondents' Brief as Exhibit I) (CJR App., at pp. 88-89, 98-101). The practice of split routing thus did not damage MOL.

24. In summary, Global Link's "split routing" scheme consisted of the following: Global Link would book containers to fictitious final inland destinations. These fictitious destinations would be set forth on the master bills of lading ("MBL") issued by MOL to Global Link and on "shipline" delivery orders prepared by Global Link and sent to MOL. The freight and charges for transportation to these fictitious destinations were less than the freight and charges applicable to the actual destinations to which the containers were in fact transported by Global Link's preferred truckers. The actual final inland destinations were set forth in "truckline" delivery orders prepared by Global Link and given to its "preferred truckers" and in the house bills of lading ("HBL") issued by Global Link to its customers. By Global Link's own admission, the final destination given to the ocean carrier was totally false. Global Link also would, whenever possible, book containers to fictitious final destinations with high trucking payments, thus earning "credits" with the truckers. These "credits" could then be used in those instances where the actual final destinations were more distant and required a trucking payment that exceeded the amount paid by the ocean carriers for transportation to fictitious destinations. (Global Link Voluntary Disclosure (Exh. C) at ¶ 8 and 10 (App. 111 and 114)).

RESPONSE: The CJR Respondents object to paragraph 24 on the grounds that the Voluntary Disclosure is inadmissible as to the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents show further that GLL engaged in the practice of split routing with MOL's knowledge and at MOL's encouragement. (Rosenberg Dec., at ¶¶ 36-52) (CJR Exh. A) (CJR App., at pp. 6-9); (Briles Dec., at ¶¶ 8–26, 30-46, 56, 58) (CJR Exh. B) (CJR App., at pp. 14-16, 17-20, 22,

23). The CJR Respondents show further that in 2003 GLL stopped the practice of shortstopping on the advice of counsel. (Rosenberg Dec., at ¶ 11) (CJR Exh. A) (CJR App., at p. 3).

25. This "credit/debit" system was confirmed by Eric Joiner of Global Link. Mr. Joiner described the practice as follows:

> Q. What did you mean by debit and credit?
>
> A. In other words, if there was additional on carriage expense to be carried forward, in other words, the point was -- let's say -- further but they were going to have to charge us the difference, then we would pay for that, and I refer to that as a debit, as opposed to a credit where the container went to a place where there was -- it cost the trucker less, and then the trucker would somehow give us money back.

(Transcript of Deposition of Eric Joiner dated October 10, 2008 ("Joiner Dep.") at page 76, line 18—page 77, line 2, annexed hereto as Exh. BA (App. 1540)).

RESPONSE: The CJR Respondents object to paragraph 25 on the grounds that the deposition of Eric Joiner in the Arbitration is inadmissible in this proceeding. Mr. Joiner's out-of-court statements at his deposition in the Arbitration are hearsay. As discussed above with respect to Ms. Ivy's deposition in the Arbitration, prior sworn testimony may be admissible as an exception to the hearsay rule but *only when* the declarant is unavailable. MOL has failed to establish that Mr. Joiner is unavailable. MOL made no efforts whatsoever to depose Mr. Joiner in this proceeding despite its ability to request a subpoena from the Commission for his deposition. MOL has thus

failed to demonstrate that Mr. Joiner is unavailable and his deposition is therefore inadmissible hearsay.

MOL may try to argue that statements by Mr. Joiner at his deposition are admissible as admissions by GLL. However, it is undisputed that Mr. Joiner was not employed with GLL at the time of his deposition. His statements are thus not attributable to GLL. *See* Fed. R. Evid. 801 (d)(2)(D). Even if Mr. Joiner's statements constitute admissions by GLL, an admission by GLL is not binding on the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

Furthermore, although the Award is not admissible, the Panel found that Mr. Joiner was not credible. (Arbitration Partial Final Award) (MOL's Exh. A, at p. 35) (MOL's App., at p. 35) ("...the Panel does not credit Mr. Joiner, who was fired after less than a year and who appears to have offered himself as a consultant to both sides for compensation").

26. Global Link admitted "actively t[aking] steps to conceal the false routing scheme from . . . ocean carriers." (Global Link Voluntary Disclosure (Exh. C) at ¶ 16 (App. 117)).

RESPONSE: The CJR Respondents object to paragraph 26 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents show further that, for the reasons set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence

discussed therein, MOL knew of and encouraged GLL to engage in the practice of split routing.

The CJR Respondents admit that certain emails suggest efforts by GLL to hide the practice of split routing from MOL's operations staff. However, while GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement*, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i e., Mr. McClintock and Ms. Yang)*. (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at p. 14-17).

27. Global Link's active concealment of the "split routing" scheme "belies [any] assertions . . . that the carriers were aware of the misroutings." (Global Link Voluntary Disclosure (Exh. C) at ¶ 16 (App. 117)).

RESPONSE: The CJR Respondents object to paragraph 27 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents show further that, for the reasons set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, MOL knew of and encouraged GLL to engage in the practice of split routing.

The CJR Respondents admit that certain emails suggest efforts by GLL to hide the practice of split routing from MOL's operations staff. However, while GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement*, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms. Yang)*. (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at p. 14-17).

28. "Split routing" was nothing more than a euphemism for "lying [to ocean carriers] about where shipments are going." (Transcript of Deposition of John Williford dated July 18, 2008 ("Williford Dep.") at page 59, lines 11-20, annexed hereto as Exh. BO (App. 1691a and b)). In particular, Mr. Williford, a former executive at Global Link, testified as follows:

> Q. Whatever you want to—
>
> Do you use a particular phrase?
>
> A. I don't like split routing, because it's a euphemism. I usually call it lying about where shipments are going.
>
> Q. Who—who was being lied to?
>
> A. The carriers.
>
> Q. Carriers.
>
> Is it your testimony sitting here under oath that none of the carriers knew that GLL was engaged in split or rerouted shipments?

A. That's not my testimony. My—I don't know whether they knew or not.

I was told they knew. Then, you know, it became clear that at least—at least big portions of the companies didn't know, but, you know, I don't—I don't—whether the company itself knew or didn't know, it's a complicated issue.

Q. Well, no, sir, I disagree. It's not so complicated. Did—

You're saying that somebody was lied to. Who—what carriers do you believe were lied to?

A. Maersk.

Q. OK. Anybody else?

A. MOL.

(Williford Dep. (Exh. BO) at page 59, line 14—page 60, line 19 (App. 1691a and b)).

RESPONSE: The CJR Respondents object to paragraph 28 on the grounds that the deposition of John Williford in the Arbitration is inadmissible in this proceeding. Mr. Williford's out-of-court statements at his deposition in the Arbitration are hearsay. As discussed above with respect to Ms. Ivy and Mr. Joiner's depositions in the Arbitration, prior sworn testimony may be admissible as an exception to the hearsay rule but *only when* the declarant is unavailable. MOL has failed to establish that Mr. Williford is unavailable. MOL made no efforts whatsoever to depose Mr. Williford in this proceeding despite its ability to request a subpoena from the Commission for his deposition. MOL has thus failed to demonstrate that Mr. Williford is unavailable and his deposition is therefore inadmissible hearsay.

MOL may try to argue that statements by Mr. Williford at his deposition are admissible as admissions by GLL. However, an admission by GLL is not binding on the

CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

The CJR Respondents show further that, for the reasons set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, MOL knew of and encouraged GLL to engage in the practice of split routing.

29. Global Link knew it was lying to MOL about where its shipments were going. (Williford Dep. (Exh. BO) at page 59, line 22-page 60, line 19 (App. 1691a and b)).

RESPONSE: The CJR Respondents object to paragraph 29 for the same reasons set forth in the CJR Respondents' response to paragraph 28. The CJR Respondents show further that, for the reasons set forth on pages 9 through 28 of the CJR Respondents' Brief, MOL knew of and encouraged GLL to engage in the practice of split routing.

30. "[T]hese illegal practices consisted of "split delivery" procedures that had been employed by Global Link for years to lower its shipping rates." (Global Link Voluntary Disclosure (Exh. C) at ¶ 16 (App. 117)).

RESPONSE: The CJR Respondents object to paragraph 30 on the grounds that the Voluntary Disclosure is not admissible for the reasons set forth in the CJR Respondents' response to paragraph 6.

[ALLEGED] Discovery of Global Link's "split routing" and commencement of FMC action:

31. [Paragraph 31 of MOL's Proposed Findings of Fact is redacted in MOL's Public Version of its Opening Submission.]

RESPONSE: The CJR Respondents deny paragraph 31. As set forth in the CJR Respondents' Brief, MOL knew of the practice of split routing at GLL since 2004. MOL encouraged GLL to engage in the practice of split routing. The CJR Respondents show further that Mr. Hartmann's testimony is not credible for the reasons set forth in the CJR Respondents' Brief.

32. [Paragraph 32 of MOL's Proposed Findings of Fact is redacted in MOL's Public Version of its Opening Submission.]

RESPONSE: The CJR Respondents deny paragraph 32. As set forth in the CJR Respondents' Brief, MOL knew of the practice of split routing at GLL since 2004 and encouraged GLL to engage in the practice of split routing. Furthermore, Mr. Rosenberg's counsel in the Arbitration conducted an interview with Mr. McClintock on January 11, 2008. (Declaration of William Latham, dated February 26, 2013 ("Latham Dec."), at ¶ 4, annexed hereto as Exhibit C) (CJR App., at p. 29). During that interview, Mr. Latham and Mr. McClintock discussed a number of the issues involved in the Arbitration, including the practice of split routing at GLL and the extent of MOL's knowledge of GLL's practice. (Latham Dec., at ¶ 5) (CJR Exh. C) (CJR App., at p. 29). Mr. McClintock was indisputably aware of the practice after this interview, which was six

months prior to his receipt of the subpoena in the Arbitration. If Mr. Hartmann's testimony that he and MOL did not learn about split routing at GLL until Mr. McClintock received a subpoena in connection with the Arbitration in July of 2008 is credited, then Mr. McClintock hid from MOL and from his supervisors that he had been interviewed in connection with a legal proceeding regarding the practice of split routing – and he continued to hide that fact until he was served with the subpoena. The most reasonable conclusion from Mr. McClintock's conduct in hiding the fact that he was interviewed is that he did not want the fact that he had for years approved and endorsed GLL's practice of split routing to come to light.

The CJR Respondents show further that Mr. Hartmann's testimony is not credible for the reasons set forth on pages 25 through 27 of the CJR Respondents' Brief and based on the evidence discussed therein.

33. [Paragraph 33 of MOL's Proposed Findings of Fact is redacted in MOL's Public Version of its Opening Submission.]

RESPONSE: The CJR Respondents deny paragraph 33. The CJR Respondents further object to paragraph 33 on the grounds that the statements in Mr. Hartmann's Declaration regarding his interviews with individuals at MOL are hearsay. *See* Fed. R. Evid. 801, 802. As discussed in the CJR Respondents' Brief, MOL's investigation into the full extent of its employees' knowledge of the practice of split routing at GLL was sorely lacking. As set forth in the CJR Respondents' Brief, MOL knew of the practice of split routing at GLL since 2004 and encouraged GLL to engage in the practice of split routing.

Furthermore, Mr. Rosenberg's counsel in the Arbitration conducted an interview with Mr. McClintock on January 11, 2008. (Latham Dec. at ¶ 4) (CJR Exh. C) (CJR App., at p. 29). During that interview, Mr. Latham and Mr. McClintock discussed a number of the issues involved in the Arbitration, including the practice of split routing at GLL and the extent of MOL's knowledge of GLL's practice. (Latham Dec., at ¶ 5) (CJR Exh. C) (CJR App., at p. 29). Mr. McClintock was indisputably aware of the practice after this interview, which was six months prior to his receipt of the subpoena in the Arbitration. If Mr. Hartmann's testimony that he and MOL did not learn about split routing at GLL until Mr. McClintock received a subpoena in connection with the Arbitration in July of 2008 is credited, then Mr. McClintock hid from MOL and from his supervisors that he had been interviewed in connection with a legal proceeding regarding the practice of split routing -- and he continued to hide that fact until he was served with the subpoena. The most reasonable conclusion from Mr. McClintock's conduct in hiding the fact that he was interviewed is that he did not want the fact that he had for years approved and endorsed GLL's practice of split routing to come to light.

The CJR Respondents show further that Mr. Hartmann's testimony is not credible for the reasons set forth on pages 25 through 27 of the CJR Respondents' Brief and based on the evidence discussed therein.

34. As a result of its discovery of "split routing" practices, MOL demanded Global Link provide an accounting of all of its shipments with MOL. (Complaint and Amended Complaint (Exhs. D and F) at 6, ¶ M (App. 990 and 1004)).

RESPONSE: The CJR Respondents deny paragraph 34. MOL has known about the practice of split routing since 2004, and it did not file the Complaint and Amended Complaint until 2009.

35. Because Global Link refused to comply with MOL's request, MOL commenced this action against Global Link and the other Respondents. (Complaint and Amended Complaint (Exhs. D and F) at 6, ¶ M (App. 990 and 1004)).

RESPONSE: The CJR Respondents admit that MOL commenced this action. The CJR Respondents are without information or knowledge as to whether GLL complied with any requests made by MOL.

36. MOL commenced this action within three (3) years of discovery of the illegal and fraudulent "split routing" scheme by Respondents. (Complaint and Amended Complaint (Exhs. D and F) at 6, ¶ M (App. 990 and 1004)).

RESPONSE: The CJR Respondents deny paragraph 36 of MOL's Proposed Findings of Fact. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, MOL knew of the practice of split routing at GLL since 2004, and MOL encouraged GLL to engage in the practice.

Global Link's [ALLEGED] illegal "split routing" scheme was complex and [ALLEGEDLY] required numerous steps to keep it hidden:

37. Jim Briles, a Vice President and shareholder at Global Link, explained that the goal of Global Link's "split routing" practice was to find the most cost-effective routing possible on a given shipment. (Transcript of Deposition of Jim Briles dated June 4, 2008 ("Briles Dep.") at page 49, line 3—page 50, line 9, annexed hereto as Exh. T (App. 1217)).

RESPONSE: The CJR Respondents object to paragraph 37 on the grounds that the deposition of Jim Briles in the Arbitration is inadmissible in this proceeding. Mr. Briles's out-of-court statements at his deposition in the Arbitration are hearsay. As discussed above with respect to other depositions taken in the Arbitration, prior sworn testimony may be admissible as an exception to the hearsay rule but *only when* the declarant is unavailable. MOL has failed to establish that Mr. Briles is unavailable. MOL made no efforts to depose Mr. Briles in this proceeding despite its ability to request a subpoena from the Commission for his deposition. MOL has thus failed to demonstrate that Mr. Briles is unavailable and his deposition is therefore inadmissible hearsay.

38. Most cost-effective meant the lowest "landed cost," or the lowest cost in total transportation charges for a particular shipment, including ocean, rail and trucking. (Briles Dep. (Exh. T) at page 49, line 3—page 50, line 9 (App. 1217)).

RESPONSE: The CJR Respondents object to paragraph 38 on the grounds that the deposition of Mr. Briles from the Arbitration is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 37.

39. Jim Briles further explained the lowest "landed cost" included finding and implementing "low-cost split moves." (Briles Dep. (Exh. T) at page 166, line 15—page 168, line 16 (App. 1229)).

RESPONSE: The CJR Respondents object to paragraph 39 on the grounds that the deposition of Mr. Briles from the Arbitration is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 37.

40. Mr. Briles also explained that "split routing" required that different information be inserted in transportation documents involving the ocean carrier as compared to the documents given to Global Link's customers and truckers. With respect to master and house bills of lading, Mr. Briles testified:

> Q. Focusing on a split move, is there any information on it, on the bill of lading about a destination in the United States?
>
> A. Focusing on the split, on the master [bill of lading], yeah, there's the contract final destination point.
>
> Q. "Contract final destination point," could you explain what you mean by that?
>
> A. It's where the container's booked to with the steamship line, based on the contract rate.

Q. And, again, focusing on a split move, is there similar information or the same information on the house bill of lading?

A. There is some similar information, and there is some same information.

Q. Is the final destination point the same?

A. On a split move?

Q. Correct.

A. No.

Q. Why is that?

A. The house bill is the receipt between our customer and us, and so it's based on the point we have in our contract with our customer.

(Briles Dep. (Exh. T) at page 109, line 23-110, line 23 (App. 1221)).

RESPONSE: The CJR Respondents object to paragraph 40 on the grounds that the deposition of Mr. Briles from the Arbitration is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 37. The CJR Respondents further object to paragraph 40 on the grounds that the deposition of David Donnini in the Arbitration, which is cited in MOL's footnote to paragraph 40, is inadmissible in this proceeding for the reasons discussed with respect to Ms. Ivy, Mr. Williford, and Mr. Briles's depositions. The CJR Respondents show further that, as set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, MOL knew of and encouraged the practice of split routing at GLL.

41. With respect to delivery orders, Mr. Briles testified:

Q. And in the split move situation, the information on the delivery order that goes to the ship line and the delivery order that goes to the trucking firm have some different information, correct?

A. On a split move, yes.

Q. And what is the different information?

A. The information on the DO to our trucker matches the house bill. The information on the DO to the steamship line matches the master bill.

Q. And why do you send a delivery order to the steamship line? What do they care?

A. They have to release the container to us.

Q. And they release the container to you based on a delivery order that has an address that's not where the container is going; is that correct?

A. On the split moves?

Q. Yes.

A. Yes.

(Briles Dep. (Exh. T) at page 113, line 4—page 114, line 1 (App. 1222)).

RESPONSE: The CJR Respondents object to paragraph 41 on the grounds that the deposition of Mr. Briles from the Arbitration is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 37.

42. In an email exchange on July 14, 2005 with Mr. Briles, Respondent Rosenberg specifically noted that "split routing" involved false booking that benefits Global Link to the detriment of ocean carriers. In particular, Respondent Rosenberg advised Mr. Briles:

> Don't try to get the carriers to use logic . . . . **Don't forget why we mis-book, because the carriers don't make sense. So let's use it to our**

advantage—and not push for low ipi's in areas where we already have 1 good ipi.

(Email from Chad Rosenberg to Jim Briles dated July 12-15, 2005, annexed hereto as Exh. AI (App. 1472) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 42 on the grounds that Exhibit AI does not have anything to do with MOL or a GLL shipment with MOL and is thus irrelevant. Subject to this objection, the CJR Respondents admit that paragraph 42 accurately quotes Mr. Rosenberg's e-mail. The CJR Respondents deny MOL's characterization of Mr. Rosenberg's e-mail and specifically deny that his e-mail suggests that split routing is detrimental to MOL.

43. Respondent Rosenberg specifically directed Mr. Briles to repeatedly "mis-book" shipments to the final inland destination with the lowest cost for a particular region. (Email from Chad Rosenberg to Jim Briles dated July 12-15, 2005, annexed hereto as Exh. AI (App. 1472)).

RESPONSE: The CJR Respondents deny MOL's characterization of Mr. Rosenberg's e-mail. There is no evidence that Mr. Rosenberg directed Mr. Briles or anyone else with respect to any shipments at issue in this case. There is also no evidence that Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents as to any shipments at issue in this case. (Rosenberg Dec., at ¶¶ 21-39) (CJR Exh. A) (CJR App., at pp. 4-7); (Briles Dec., at ¶¶ 47 - 48) (CJR Exh. B) (CJR App., at p. 20).

44. "Split routing" did not only involve locating favorable freight rates and charges on certain routings. "It was also important for the false routing scheme that Global Link be able to designate its "preferred truckers" to be used by ocean carriers. This is because it was necessary to find motor carriers who would be willing to deliver the ocean containers to a different destination than the one shown on the master bill of lading and carrier's freight release." (Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113-14)).

RESPONSE: The CJR Respondents object to paragraph 44 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6.

45. "Split routing" required locating a "preferred trucker" with the lowest or best cost in transporting the last leg of the transit. (Email exchange between Wayne Martin, Jim Briles and Gary Meyer dated February 24, 2005, annexed hereto as Exh. S (App. 1213-14)).

RESPONSE: The CJR Respondents object to paragraph 45 on the grounds that the e-mail exchange cited by MOL is hearsay. To the extent that MOL contends that the statements in the e-mail exchange are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. Furthermore, the e-mail does not involve Mr. Rosenberg and in no way evidences that

Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents as to any shipments at issue in this case.

46. Even after the routing was confirmed and in place with the proper steamship line (often referred by Global Link as an "SSL") and preferred trucker, Global Link's "split routing" scheme also required additional accounting by which Global Link would deduct the trucking payment provided by the steamship line from the total cost charged by the preferred trucker, and then, if necessary, Global Link would arrange to pay for the difference in price. (Email exchange between Jim Briles, Chad Rosenberg, Joanne Picardi, Shayne Kemp and Gary Meyer dated March 1, 2006, annexed hereto as Exh. R (App. 1210)).

RESPONSE: The CJR Respondents object to paragraph 46 on the grounds that the e-mail exchange cited by MOL is hearsay. To the extent that MOL contends that the statements in the e-mail are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents further object to paragraph 46 on the grounds that the e-mail does not relate to MOL or a GLL shipment with MOL and is therefore irrelevant.

47. Global Link also kept track of those instances where the trucker delivered the shipment to a destination, lesser in distance from the booked location, by creating a "credit" or "debit" practice with its preferred truckers. As explained in the Arbitration,

> When the actual destination was more distant from the port or container yard ("CY") than the destination on the ocean carrier-issued MBL, the carrier would have given the trucker an allowance for trucking from the port or CY to the MBL destination, and Global Link would pay the trucker an additional amount to compensate the trucker for driving the additional distance to the actual destination. Where the actual destination was nearer than the MBL destination to the port or CY, a situation colloquially referred to as "short-stopping," . . . **Global Link would book a credit for the "savings" realized by the trucker, having traveled a shorter distance than that for which it had received an allowance from the ocean carrier, and GLL would offset that "credit" again the amount ("debit") owed to a trucker when it took containers on a different shipment to a destination further than the one for which the trucker had received an allowance from the ocean carrier.**

(Arbitration Partial Final Award (Exh. A) (App. 9) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 47. As set forth in the CJR Respondents' response to paragraph 22, the Award is inadmissible and collateral estoppel does not apply. The CJR Respondents show further that in 2003 GLL stopped the practice of shortstopping based on the advice of GLL's maritime counsel. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).

48. Global Link's illegal "split routing" practice of fictitious bookings was a commonplace occurrence. For example, Jim Briles stated:

> This is what I meant yesterday when I said I did not want to be compared to other managers here . . . **perfect example of people not understanding our business—how does a group manager not understand splits . . . its ALL we do!!!!**

(Email from Jim Briles to Chad Rosenberg dated March 1, 2006, annexed hereto as Exh. R (App. 1210) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 48 on the grounds that Mr. Briles's e-mail is hearsay. To the extent that MOL contends that the statements in the e-mail are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

49. It is undisputed:

> . . . [T]he false routing practices were widespread and covered multiple steamship lines, Global Link customers, destination points, and motor carriers.

(Global Link Voluntary Disclosure (Exh. C) at ¶ 13 (App. 116)).

RESPONSE: The CJR Respondents object to paragraph 49 on the grounds that the Voluntary Disclosure is inadmissible against the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

50. Global Link admitted misusing its service contracts with MOL. (Global Link Voluntary Disclosure (Exh. C) at ¶ 18 (App. 119)).

RESPONSE: The CJR Respondents object to paragraph 50 on the grounds that the Voluntary Disclosure is inadmissible against the CJR Respondents for the reasons set forth in the CJR Respondents' response to paragraph 6.

Documents and Details of Sample Split Routing Shipments:

51. In accordance with the ALJ's October 16, 2012 Procedural Order and Briefing Schedule (Exh. L at 3 (App. 1140)), MOL is submitting documentation for eight (8) sample shipments which were previously identified in its Statement in Response to August 16, 2012 Order to Submit Status Reports, annexed hereto as Exh. U (App. 1230), and the Public Version of MOL's March 5, 2012 letter to Judge Guthridge, annexed hereto as Exh. BN at 4-5 (App. 1643-44). Each representative shipment consists of the following documents:

A. Master bill of lading;

B. House bill of lading;

C. screen shot of relevant HBL shipment details from the Datamyne database;

D. copy of relevant page from applicable service contract;

E. copy of relevant page from applicable tariff;

F. Shipline delivery order;

G. Truckline delivery order;

H. Import Transportation Order Sheet a/k/a "TPO"

I. Arrival Notice, if available;

J. Truck accounting papers, including truck invoices and MOL payments.

RESPONSE: The CJR Respondents object to paragraph 51. While the CJR Respondents do not dispute that MOL submitted sample documentation for eight shipments, the CJR Respondents reiterate their objections to the sampling procedure set forth in the ALJ's October 16, 2012 Order. This procedure is an improper use of 46 C.F.R. 502.251 ("Rule 251"). Rule 251 is a means of determining reparations, not liability. It is thus improper to use a sampling procedure pursuant to the Rule unless and

until there has been a determination of liability. Using a sampling procedure to determine liability deprives the CJR Respondents of due process. It is also at odds with the basic premise that MOL bears the burden on its claims and that MOL must prove that a Shipping Act violation occurred for every shipment for which it claims a violation occurred. *See Anderson Int'l Transport and Owen Anderson – Possible Violations of Sections 8(A) and 19 of the Shipping Act of 1984*, No. 07-02, 30 S.R.R. 1349, 2007 WL 5067621, at *1 (F.M.C. March 22, 2007) ("Each shipment is a separate violation.").

Furthermore, the sampling procedure is particularly improper if the ALJ applies to MOL's claims against the CJR Respondents:

- MOL must show that the CJR Respondents *participated* in each shipment for which MOL seeks reparations. The sampling procedure threatens to relieve MOL of that burden.

- MOL must show that the CJR Respondents acted as an NVOCC for each shipment for which MOL seeks reparations. The sampling procedure threatens to relieve MOL of that burden.

- MOL must also that it suffered actual injury for each shipment for which it seeks reparations. The sampling procedure threatens to relieve MOL of that burden.

- The sampling procedure fails to take into account that GLL was sold on June 7, 2006. The CJR Respondents were not in any way involved or affiliated with the company after that date and cannot be liable for any shipments occurring after that date.

The CJR Respondents thus vigorously reiterate their objections to the sampling procedure. Notwithstanding their objections, the CJR Respondents show that MOL's sample shipments fail to in any way show that the CJR Respondents *participated* in the sample shipments or any others at issue in this case, that the CJR Respondents acted as an NVOCC with respect to the sample shipments or any others, or that MOL suffered actual injury with respect to the sample shipments or any others.

52. These sample shipments are representative of the false and fraudulent "split routing" practices used by the Respondents in connection with the many thousands of shipments booked by Global Link with MOL.

RESPONSE: The CJR Respondents object to paragraph 52 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents also deny MOL's characterization of the practice of split routing as "fraudulent". As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein MOL knew about the practice and encouraged it, the practice was in no way fraudulent. *See generally, Suntrust Mortg , Inc. v. Busby*, 651 F. Supp. 2d 472, 485 (W.D.N.C. 2009) (". . . a claim for . . . fraud . . .is not cognizable where the pleader . . .knows the true facts.").

53. The destination in the master bill of lading is a fictitious destination requested by Global Link. The destination in the house bill of lading issued by Global Link to its customer

shows the actual destination for the shipment. This latter destination was given by Global Link to its preferred trucker and hidden from MOL.

RESPONSE: The CJR Respondents object to paragraph 53 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that the practice of split routing was hidden from MOL, for the reasons set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein.

54. As shown by the relevant page from the applicable service contract and/or tariff for each sample shipment, the rate to the booked destination was lower than the rate to the actual destination.

RESPONSE: The CJR Respondents object to paragraph 54 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages in any shipments which were split routed, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

55. A master bill of lading is included in each sample shipment to show the (fake) place of delivery Global Link requested. The house bill of lading is included in prove that Global Link intended from the beginning to deliver the shipment to an entirely different inland destination.

RESPONSE: The CJR Respondents object to paragraph 55 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51.

56. The shipline and truckline delivery orders show that Global Link prepared separate transportation documents in order to perpetuate its fraudulent scheme and to keep MOL from knowing that Global Link was not delivering the shipment to the booked final destination. The shipline delivery order containing the false final destination was sent by Global Link to MOL. The truckline delivery order containing the actual or "correct" final destination was tendered by Global Link to its "preferred" trucker.

RESPONSE: The CJR Respondents object to paragraph 55 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny MOL's characterization of the practice of split routing as "fraudulent" and deny that GLL was trying to "keep MOL from knowing" about the practice of split routing, for the reasons set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein.

57. Global Link would also prepare an arrival notice which is included with each sample shipment, with the true or "correct" final destination.

RESPONSE: The CJR Respondents object to paragraph 57 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51.

58. Based upon Global Link's false booking destination, MOL would in turn prepare an Import Transportation Order or "TPO" which is included with each sample shipment. MOL sent the TPO to the trucker to complete the final leg of the movement. Upon confirmation of completion of the final inland movement, MOL would then arrange payment for the trucker based upon the supposed delivery to the false booking location.

RESPONSE: The CJR Respondents object to paragraph 58 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51.

59. Each sample shipment is organized by master bill of lading number.

RESPONSE: The CJR Respondents object to paragraph 59 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51.

60. Annexed hereto as Exh. AE (App. 1429) is a spreadsheet prepared by MOL which provides details pertaining to the eight (8) sample shipments. The rate applicable to transportation of the shipment to the fictitious destination (as shown in the MOL master bill of lading) is set forth in black. The rate applicable to the transportation of the shipments to the actual destination (as shown in Global Link's house bill of lading) is set forth in red. In each instance, the rates and charges for transportation to the fictitious booked destination as per the applicable service contract are less than the rates and charges for transportation to the actual destination for the shipment.

RESPONSE: The CJR Respondents object to paragraph 60 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents

deny that MOL suffered any damages as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

61. MOL audited a total of 9,562 shipments for 2004 through 2006, involving roughly 75,000 TEUs. MOL selected these eight (8) sample shipments because they all involved delivery to the following actual destinations: Statesville, NC; Lynchburg, VA; Atlanta, GA; Colonial Heights, VA; Rocky Mount, VA and Carol Stream, IL. These actual final destinations represent a total of 1,390 shipments or approximately 15% of the total number of shipments booked by Global Link during the relevant time period. (Public Version of MOL's March 15, 2012 letter to Judge Guthridge at 6, annexed hereto as Exh. BN) (App. 1640).

RESPONSE: The CJR Respondents object to paragraph 61 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

62. MOL master bill of lading No. MOLU482974483, and associated transportation documents, is annexed hereto as Exh. W (App. 1260-77). Through Global Link's "split routing" practices, MOL was damaged in the amount of $621.

RESPONSE: The CJR Respondents object to paragraph 62 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 62, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the

CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

63. MOL master bill of lading No. MOLU449860016, and associated transportation documents, is annexed hereto as Exh. X (App. 1278-97). Through Global Link's "split routing" practices, MOL was damaged in the amount of $390.

RESPONSE: The CJR Respondents object to paragraph 63 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 63, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate –

MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

64. MOL master bill of lading No. MOLU450178040, and associated transportation documents, is annexed hereto as Exh. Y (App. 1298-1321). Through Global Link's "split routing" practices, MOL was damaged in the amount of $3,663.

RESPONSE: The CJR Respondents object to paragraph 64 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 64, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

65. MOL master bill of lading No. MOLU450178063, and associated transportation documents, annexed hereto as Exh. Z (App. 1322-41). Through Global Link's "split routing" practices, MOL was damaged in the amount of $3,648.

RESPONSE: The CJR Respondents object to paragraph 65 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 65, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the

CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

66. MOL master bill of lading No. MOLU532657607, and associated transportation documents, is annexed hereto as Exh. AA (App. 1342-63). Through Global Link's "split routing" practices, MOL was damaged in the amount of $1,840.

RESPONSE: The CJR Respondents object to paragraph 66 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 66, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate –

MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

67. MOL master bill of lading No. MOLU451923539, and associated transportation documents, is annexed hereto as Exh. AB (App. 1364-93). Through Global Link's "split routing" practices, MOL was damaged in the amount of $452.

RESPONSE: The CJR Respondents object to paragraph 67 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 67, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book

shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

68. MOL master bill of lading No. MOLU449742001, and associated transportation documents, is annexed hereto as Exh. AC (App. 1394-1412). Through Global Link's "split routing" practices, MOL was damaged in the amount of $615.

RESPONSE: The CJR Respondents object to paragraph 68 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 68, or generally as a result of the practice of split routing, for the reasons set forth on

pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

69. MOL master bill of lading No. MOLU449742491, and associated transportation documents, is annexed hereto as Exh. AD (App. 1413-28). Through Global Link's "split routing" practices, MOL was damaged in the amount of $1,470.

RESPONSE: The CJR Respondents object to paragraph 69 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 69, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Furthermore, to the extent MOL is claiming that GLL should have paid the tariff rate for this shipment, MOL's argument completely ignores the practical realities of the business. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein. Mr. McClintock and Ms. Yang encouraged GLL to book shipments to regional door points in the service contract and to then engage in the practice of split routing to move the shipments to their final destination. Mr. McClintock and Ms. Yang were also reluctant to add and negotiate new points to GLL's service contracts. If Mr. McClintock and Ms. Yang had expected these shipments to be booked to their final destination and not the regional door points – and if they had still refused to add points for such final destinations and instead expected GLL to pay the tariff rate – MOL would never have been paid tariff rates or diversion fees by GLL even if GLL did not reroute. Rather, GLL would have negotiated reasonable, market rates with MOL for

GLL's customers' door points. If MOL was unwilling to negotiate such rates, GLL would have worked with other carriers to service its customers at those door points. It would never have paid tariff rates or diversion charges for every shipment. Thus, putting aside that MOL is not entitled to any reparations for the many reasons set forth in the CJR Respondents' Brief, it is completely illogical for MOL to claim reparations based on its tariff rates for shipments that were split routed.

70. Each of these representative samples illustrates booking of a fictitious final destination, and the payment to a "preferred trucker" by MOL based upon the false final destination, not the actual final destination traveled by the preferred trucker at Global Link's (secret) request. (Exhs. AE (App. 1429) and W-AD (App. 1260-1428)).

RESPONSE: The CJR Respondents object to paragraph 70 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the sample shipments or any other shipments.

71. Annexed hereto as Exh. AF (App. 1430) is a second spreadsheet concerning the same eight (8) sample shipments prepared by MOL which compares (i) the distance for inland transportation from the destination port to the false destination booked with MOL to (ii) the distance for inland transportation from the destination port to the actual destination traveled by Global Link's preferred trucker. (Exh. AF (App. 1430) and Public Version of

MOL's March 15, 2012 letter to Judge Guthridge at 5, annexed hereto as Exh. BN (App. 1640)).

RESPONSE: The CJR Respondents object to paragraph 71 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51.

72. Exh. AF (App. 1430) is organized by MOL master bill of lading numbers. The columns are organized to show the routing each shipment traveled from origin load port to final destination. The columns show the load port, followed by the discharge port. The columns then show the inland movement of the shipments from discharge port to the rail ramp, and then final leg via truck. The final distance is calculated by comparing the distance traveled from the rail head to the false final destination and the distance traveled from the rail head to the actual final destination. The difference in mileage is then multiplied by the cost per mile (based on the TPO rate) to calculate the total amount overpaid by MOL for each shipment.

RESPONSE: The CJR Respondents object to paragraph 72 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 72, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

73. As shown in Exh. AF (App. 1430), the distance actually traveled by the truckers was often less than the distance they would have traveled from the ramp to the fictitious destination. As a result, in each of these sample shipments, Global Link's preferred truckers were overpaid since MOL paid the truckers for transportation to further points than to where they actually traveled.

RESPONSE: The CJR Respondents object to paragraph 73 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the sample shipments, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

74. With respect to MOLU482974483, MOL overpaid for trucking by $234.63. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 74 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 74, or generally as a result of the practice of split routing, for the reasons set forth on

pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 74, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

75. With respect to MOLU449860016, MOL overpaid for trucking by $37.50. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 75 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 75, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 75, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

76. With respect to MOLU450178040, MOL overpaid for trucking by $116.80. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 76 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 76, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 76, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

77. With respect to MOLU450178063, MOL overpaid for trucking by $116.80. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 77 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 77, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual

destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 77, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

78. With respect to MOLU532657607, MOL overpaid for trucking by $210.14. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 78 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 78, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 78, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

79. With respect to MOLU451923539, MOL overpaid for trucking by $405.52. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 79 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 79, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 79, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

80. With respect to MOLU449742001, MOL overpaid for trucking by $603.82. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 80 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 80, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual

destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 80, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

81. With respect to MOLU449742491, MOL overpaid for trucking by $314.50. (Exh. AF (App. 1430)).

RESPONSE: The CJR Respondents object to paragraph 81 and the sampling procedure itself, for the reasons set forth in their response to paragraph 51. The CJR Respondents deny that MOL suffered any damages with respect to the shipment at issue in paragraph 81, or generally as a result of the practice of split routing, for the reasons set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein. The CJR Respondents show further that in shipments where the actual destination that the goods were delivered to was closer than the final destination in the master bill of lading, like the shipment identified in paragraph 81, because GLL paid MOL for the entirety of the amount that MOL paid to the trucker for each door move shipment, it was *GLL* that overpaid for the shipments, not MOL. (Rosenberg Dec., at ¶¶ 61-66) (CJR Exh. A) (CJR App., at pp. 10-11).

82. As a result of Global Link's "split routing" scheme, MOL lost money in two (2) ways: first, it lost revenue as a result of Global Link's use of false destinations, and second, it overpaid Global Link's "preferred trucker" for inland movements that did not occur.

RESPONSE: The CJR Respondents deny paragraph 82. The CJR Respondents further deny that MOL suffered any damages as a result of the practice of split routing as set forth on pages 28 through 32 of the CJR Respondents' Brief and based on the evidence discussed therein.

Global Link [ALLEGEDLY] repeatedly sought to keep "split routing" a secret from MOL:

83. In addition to the preparation and issuance of many thousands of false transportation documents, there are numerous admissions from Global Link that they sought to keep "split routing" a secret from MOL and other steamship lines.

RESPONSE: The CJR Respondents deny paragraph 83. As set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, MOL's senior management knew of and endorsed the practice of split routing. At the encouragement of MOL's senior management, GLL attempted to keep the practice of split routing from MOL's operations staff.

84. On July 16, 2006, Eileen Cakmur, an employee of Global Link, sent an email to officers of Global Link admitting that Global Link engaged in "split routing" and actively sought

to keep "split routing" a secret from steamship lines for years. (Email from Eileen Cakmur to John Williford of Global Link dated July 16, 2006, annexed hereto as Exh. Q (App. 1206)). In particular, Ms. Cakmur wrote:

> GLOBAL LINK books the shipments with SSL [steamship line] to a destination where the rate is lower than the real destination; therefore, the final destination on the house bill of lading does not match with the final destination on the master bill of lading. 80% of GLOBAL LINK shipments go to a different destination than what shows on MBL. GLOBAL LINK calls these types of moves "split delivery" or "split moves." This is also explained in GLOBAL LINK's Manual Section 8 under Trucking Procurements and Management. It is also in GLOBAL LINK Silver Bullet. Let's say on MBL final destination is Tulsa, OK but it is actually going to Oklahoma City, OK. What I used to do everyday was send a delivery order where we put our preferred trucker to SSL with a made up address telling them this container was going to Tulsa, OK. SSL releases the container to GLOBAL LINK preferred trucker. I also send a delivery order to the preferred trucker with the right address which is Oklahoma City, OK in this case. Trucker takes the container to the right address. SSL gives an allowance to a trucker and most of the time GLOBAL LINK does have trucking cost. If the allowance does not cover it, trucker charges GLOBAL LINK the difference. If you see the bookings, it shows HBL destination is different than MBL destinations.
>
> **GLOBAL LINK has been practicing these illegal activities for years. If any of the SSL kn[ew] that they have been [de]fraud[ed] all these years, GLOBAL LINK will close their doors.** Doing this kind of risky business, GLOBAL LINK should re consider (sic) how to treat their employees. Every single one of them knows what kind of crime GLOBAL LINK commits every day. (emphasis added).

RESPONSE: The CJR Respondents object to paragraph 84 on the grounds that Ms. Cakmur's e-mail is hearsay. To the extent that MOL contends that the statements in the e-mail are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

85. Eileen Cakmur, who has been identified as a whistle-blower, not only admitted Global Link knew the "split routing" scheme was illegal, but confirmed Global Link had successfully prevented steamship lines from being aware of its illegal "split routing" scheme. (Email from Eileen Cakmur (Exh. Q (App. 1206)) and Transcript of Deposition of David Donnini dated April 16, 2008 ("Donnini Dep.") at page 17, line 13—page 18, line 10, annexed hereto as Exh. BS (App. 1673-74)).

RESPONSE: The CJR Respondents object to paragraph 85 on the grounds that Ms. Cakmur's e-mail is hearsay. To the extent that MOL contends that the statements in the e-mail are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

The CJR Respondents further object to paragraph 85 on the grounds that Mr. Donnini's deposition in the Arbitration is inadmissible for the reasons set forth above.

86. In the early stages of its implementation of the "split routing" scheme, Global Link had to repeatedly advise, train and admonish its employees on the specific details of the scheme, in particular that the true final destination of the shipments differed from destination booked with steamship lines. (Email string between Tommy Chan, Emily So, Respondent Chad Rosenberg and Jim Briles dated May 25, 2004, annexed hereto as Exh. AH (App. 1466-68) and Email string between Respondent Rosenberg and Jim Briles dated July 12, 2005, annexed hereto as Exh. AI (App. 1473-73)).

RESPONSE: The CJR Respondents object to paragraph 86 on the grounds that the May 25, 2004 e-mail exchange is hearsay. To the extent that MOL contends that any of the statements in the e-mail exchange are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons discussed above.

87. Global Link often had to re-explain the specific steps needed to prevent ocean carriers from understanding the full nature and extent of the fraud and misrepresentations concerning Global Link's "split routing" or "mis-booking" of thousands and thousands upon shipments. (Exhs. AH (App. 1466-68) and AI (App. 1472-73)). For example, on May 25, 2004, Tommy Chan corresponded with Emily So of Global Link about confusion on exactly how "split routing" worked. (Exh. AH (App. 1466-68)).

RESPONSE: The CJR Respondents object to paragraph 87 on the grounds that the May 25, 2004 e-mail exchange is hearsay. To the extent that MOL contends that any of the statements in the e-mail exchange are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that as set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discussed therein, MOL knew of and encouraged the practice of split routing.

88. In particular, Mr. Chan advised Ms. So as follows:

> We understood the final destination for physical delivery, but it's not the routing decision for Loading Port's operation—which MBL destination should be arrange[d], you can see the samples [have been] relayed to you—final destination is to A, but we have to arrange the MBL destination to B for most cases. (sic) You may refer to Chad the reason for this kind of special arrangement.

(Email string between Tommy Chan, Emily So, Respondent Rosenberg and Jim Briles dated May 25, 2004 (Exh. AH) (App. 1466)).

RESPONSE: The CJR Respondents object to paragraph 88 on the grounds that Mr. Chan's e-mail is hearsay.

89. The phrase "special arrangement" was Global Link's euphemism for "split routing." (Exh. AH (App. 1466)).

RESPONSE: The CJR Respondents object to paragraph 89 on the grounds that Mr. Chan's e-mail is hearsay.

90. On September 20, 2005, Dee Ivy, an employee of Global Link, expressed frustration and guilt concerning Global Link's repeated misrepresentations made to steamship lines about "split routing." (Email string from Dee Ivy to her Global Link colleagues dated September 16-20, 2005, annexed hereto as Exh. AK (App. 1479)).

RESPONSE: The CJR Respondents object to paragraph 90 on the grounds that the September 16-20, 2005 e-mail exchange is hearsay. To the extent that MOL contends that any of the statements in the e-mail exchange are admissible as admissions by GLL,

GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

91. In particular, Ms. Ivy wrote:

> Lena from Maersk just called me regarding the below 3 containers on J.W. Watson's yard. She wanted to know why they have not delivered to customer on D.O., and I told her that my customer has not gotten the O.K. to delivery to customer on D.O.
>
> She wanted to confirm that we know we will be charged storage/demurrage/per diem for them. My reply was "yep".
>
> I have a bunch of Maersk containers sitting on yards, and it's only a matter of time before they start questioning them all.
>
> **I don't like having to constantly lie and make up excuses as to why/where these containers are going, or not going.**
>
> I personally think we as a company need to revisit our policy on split shipments. The extra hassle/lies we have to tell is not fair to us CAMs [customer account managers], and it does not fit within our new Mission Statement.
>
> I just had to get that off my chest.

(Email string from Dee Ivy to her Global Link colleagues dated September 16-20, 2005 (Exh. AK) (App. 1479) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 91 on the grounds that Exhibit AK does not have anything to do with MOL or a GLL shipment with MOL and is thus irrelevant. The CJR Respondents further object to paragraph 91 on the grounds that Ms. Ivy's e-mail exchange is hearsay. To the extent that MOL contends that the e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

92. In order to maintain the fiction that the shipments were in fact traveling to the booked location, Global Link trained its employees to create a fake delivery address so as to avoid MOL's detection of "split routing" and allow Global Link to continue misrepresenting the final destination of its shipments. (Email from Wayne Martin to various Global Link employees dated June 24, 2005 (App. 1478), annexed hereto as Exh. AJ.

RESPONSE: The CJR Respondents object to paragraph 92 on the grounds that Mr. Martin's e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that as set forth on pages 13 through 18 of the CJR Respondents' Brief and based on the evidence discussed therein, GLL attempted to keep the practice of split routing hidden from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement.

93. On June 24, 2005, Wayne Martin, another Global Link employee, wrote to his co-workers and described how to create a false delivery address in order to deceive MOL on the true final destination of shipments. In particular, Mr. Martin advised his team as follows:

> **When dispatching split moves to MOL Norfolk be sure you use and** (sic) **actual address for the manifested city and use our phone number.**

(Email from Wayne Martin to various Global Link employees dated June 24, 2005 (Exh. AJ) (App. 1478)).

RESPONSE: The CJR Respondents object to paragraph 93 on the grounds that Mr. Martin's e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

94. In other words, Mr. Martin advised his fellow Global Link employees to obtain an actual street address when booking to a false final destination with MOL, but use a Global Link telephone number so that if MOL would call about releasing the container from the ramp, a Global Link employee could intercept and ensure MOL did not find out Global Link never intended to deliver the shipment to the booked location. (Exh. AJ (App. 1478)).

RESPONSE: The CJR Respondents object to paragraph 94 on the grounds that Mr. Martin's e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that as set forth on pages 13 through 18 of the CJR Respondents' Brief and based on the evidence discussed therein, GLL attempted to keep the practice of split routing hidden from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement.

95. On September 19, 2005, Jim Briles of Global Link emailed his co-worker, Gary Meyer to advise that Global Link's operations people should not meet with a steamship line's sales personnel because such meetings only served to "illustrate that [Global Link was] not routing to the correct door [destination]." (Email from Jim Briles to Gary Meyer dated October 19, 2005 at 1, annexed hereto as Exh. AL (App. 1482)).

RESPONSE: The CJR Respondents object to paragraph 95 on the grounds that Mr. Briles's e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that this e-mail is not relevant because it concerns GLL's relationship with Maersk, not MOL.

96. Global Link continued to instruct its employees to use Google to create a fake address for the final destination on the master bill of lading. (Email dated April 3, 2006 from Wayne Martin to various Global Link employees, annexed hereto as Exh. Q (App. 1207)).

RESPONSE: The CJR Respondents object to paragraph 96 on the grounds that Mr. Martin's e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

97. In particular, in response to a question about how to create a fictitious destination to give to the ocean carrier when booking a "split" shipment, Mr. Martin instructed his fellow employees:

> Dee
>
> These are all very good questions.
>
> How are you finding a real address for ea. door location? Are you just picking from a phone book?
>
> **Answer: I Google a furniture company (in most cases) located in the city that the MSK MBL is manifested, I use our customers name and that companies address. This has been covering me when MSK queries the address as a valid address in the manifested town.**
>
> We would have to remember to use the exact same address per customer & door ea. time. Otherwise, [Maersk] will notice we have the same deliver to company, but with different "real" addresses all the time.

(Email dated April 3, 2006 from Wayne Martin to various Global Link employees (Exh. Q) (App. 1207) (emphasis in original).

RESPONSE: The CJR Respondents object to paragraph 97 on the grounds that Mr. Martin's e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

98. On August 11, 2005, Joanne Picardi, a Global Link employee, learned that Evans Delivery could no longer be Global Link's "preferred trucker" for MOL shipments through Norfolk, VA. (Email string between Joanne Picardi, Jim Briles, Emily So and Shayne Kemp of Global Link dated August 11, 2005, annexed hereto as Exh. BR (App.

1667). In particular, MOL was contacting Global Link's preferred trucker to verify whether Global Link shipments were being delivered to destinations other than the booked location. (Exh. BR (App. 1668)). As a result of MOL's inquiries, Global Link's preferred trucker refused to perform "split routing" for fear of spoiling its on-going relationship with MOL. (Exh. BR (App. 1667)). Ms. Picardi communicated with Mr. Briles about the problem with its preferred trucker. (Exh. BR (App. 1667)).

RESPONSE: The CJR Respondents object to paragraph 98 on the grounds that Ms. Picardi's e-mail is hearsay. To the extent that MOL contends that her e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that MOL acknowledges in paragraph 98 that MOL was aware that GLL was engaging in the practice of split routing.

99. On August 15, 2005, in response to questions posed by MOL, Jim Briles admonished his Global Link co-workers to do a better job concealing "split routing" so that MOL would be led to believe Global Link shipments were being delivered as originally booked. (Email from Jim Briles to Global Link staff dated August 15, 2005, annexed hereto as Exh. AM (App. 1484)).

RESPONSE: The CJR Respondents do not dispute that Mr. Briles sent the August, 15, 2005 e-mail. However, the CJR Respondents dispute MOL's characterization of the e-mail and deny that GLL was attempting to conceal split routing from MOL. While GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock*

and Ms. Yang's encouragement, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms. Yang)*. (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at pp. 14-17).

100. In particular, Mr. Briles cautioned his team:

> Attention Operators:
>
> **If anybody has a shipment on the above mentioned routing, please be informed that the MOL Norfolk office is carefully scrutinizing the final destination and will not release the dispatch to your preferred truckers if they find out that container is not going to [M]artinsville [V]a.** Please check with Joanne asap for a list of truckers we can use for this trade lane. **If anyone from MOL (especially Laci) contacts and/or harasses you for a correct final destination, please do not mention not routing to the correct door and simply tell them the container is going to Martinsville, VA.** Please adv if you have any questions.

(Email from Jim Briles to Global Link staff dated August 15, 2005 (Exh. AM) (App. 1484) (emphasis added).

RESPONSE: The CJR Respondents do not dispute that Mr. Briles sent the August, 15, 2005 e-mail. However, the CJR Respondents dispute MOL's characterization of the e-mail and deny that GLL was attempting to conceal split routing from MOL. While GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement*, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms.*

Yang). (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at pp. 14-17).

101. On March 9, 2006, Jim Briles again admonished Global Link employees to prevent MOL from learning the true final destination. (Email dated March 9, 2006 from Jim Briles to GLOBAL LINK staff, annexed hereto as Exh. AN (App. 1485)).

RESPONSE: The CJR Respondents do not dispute that Mr. Briles sent the March 9, 2006 e-mail. However, the CJR Respondents dispute MOL's characterization of the e-mail and deny that GLL was attempting to conceal split routing from MOL. While GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms Yang's encouragement*, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms Yang).* (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at pp. 14-17).

102. In particular, Mr. Briles directed Global Link employees as follows:

Ops,

> **Please let me stress again, we can never tell the SSL that we [are] not delivering to the master bill of lading final destination. An operator in our office told MOL Chicago that a container routed to Fishers, IN was not going there mo[s]t times goes somewhere else and MOL Chicago decided they were over paying allowances and now all cntrs on this routing MUST be returned to Indianapolis, IN.** I am working with Rebecca to get this to 10-15 F's per week (that is their export amount from Indianapolis each week). Please note that for the 10-15 cntrs a week that will have to be returned to Indianapolis wil cost us $500-600 each ($5K per week) **This is, needless to say, very costly for GLL and inexcusable. Going forward I now will not book on MOL to Fishers and we must use Maersk to service this area.**
>
> Pls distribute to your team and **pls take the time to make sure everyone understands split shipments and the importance of keeping this info private.**

(Email dated March 9, 2006 from Jim Briles to GLOBAL LINK staff, annexed hereto as Exh. AN (App. 1485) (emphasis added).

RESPONSE: The CJR Respondents do not dispute that Mr. Briles sent the March 9, 2006 e-mail. However, the CJR Respondents dispute MOL's characterization of the e-mail and deny that GLL was attempting to conceal split routing from MOL. While GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement*, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms. Yang)*. (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at pp. 14-17).

103. Mr. Briles further instructed his co-workers not to reveal that Global Link was arranging for delivery of shipments to destinations different from the MOL master bill of lading destination. (Exh. AN (App. 1485)).

RESPONSE: The CJR Respondents do not dispute that Mr. Briles sent the March 9, 2006 e-mail. However, the CJR Respondents dispute MOL's characterization of the e-mail and deny that GLL was attempting to conceal split routing from MOL. While GLL was attempting to conceal split routing *from MOL's operations staff at Mr. McClintock and Ms Yang's encouragement*, GLL was not attempting to conceal the practice of split routing *from MOL's management and sales representatives (i.e., Mr. McClintock and Ms. Yang)*. (Briles Dec., ¶¶ 26-39) (CJR Exh. B) (CJR App., at pp. 16-19). Mr. McClintock and Ms. Yang were aware of the practice and they encouraged GLL to keep it hidden from MOL's operations staff. (Briles Dec., ¶¶ 8-30, 32) (CJR Exh. B) (CJR App., at pp. 14-17).

104. Mr. Briles's co-workers responded positively to his instructions and admonitions, confirming that it was Global Link's formal policy to never reveal to MOL that shipments were not being delivered to the master bill of lading destination. (Email dated March 9, 2006 from Dorothy Thomas to various Global Link employees, annexed hereto as Exh. AO (App. 1486); Emails dated March 9, 2006 from Shayne Kemp to her team at Global Link and their responses thereto, annexed hereto as Exh. AP (App. 1487-92); and Email dated March 9, 2006 from Damon Amos to Jim Briles, annexed hereto as Exh. AQ (App. 1493)).

RESPONSE: The CJR Respondents object to paragraph 104 on the grounds that the e-mails cited therein are hearsay. To the extent that MOL contends that these e-mails are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that, as set forth on pages 9 through 28 of the CJR Respondents' Brief and based on the evidence discuss therein, Mr. McClintock and Ms. Yang knew of and encouraged GLL to engage in the practice of split routing.

105. In particular, on March 9, 2006, Dorothy Thomas of Global Link advised Mr. Briles that her team would:

> discuss on Friday morning to make sure everyone completely understand [sic] that **we do not discuss the true destination**. I am sure this [is] not anyone in our group.

(Email dated March 9, 2006 from Dorothy Thomas to various Global Link employees (Exh. AO) (App. 1486) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 105 on the grounds that Ms. Thomas' e-mail is hearsay. To the extent that MOL contends that her e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

106. On March 9, 2006, Ms. Shayne Kemp of Global Link also forwarded Jim Briles's email to her co-workers. In accordance with the instructions from Jim Briles, Ms. Kemp wrote to her team as follows:

> Team
>
> Please note below email regarding MOL; **this really hurts.**
>
> **Please advise that you understand not to tell the ssl where shipments are really going?**

(Emails dated March 9, 2006 from Shayne Kemp to her team at Global Link and their responses thereto (Exh. AP) (App. 1487) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 106 on the grounds that Ms. Kemp's e-mail is hearsay. To the extent that MOL contends that her e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

107. Ms. Kemp then obtained written confirmation that everyone on her team understood they were never to reveal the true final destination to MOL. (Exh. AP (App. 1487)).

RESPONSE: The CJR Respondents object to paragraph 107 on the grounds that Ms. Kemp's e-mail is hearsay. To the extent that MOL contends that her e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

108. Damon Amos of Global Link responded to Jim Briles's email by explaining that MOL learned that its containers were not being delivered to Fishers, Indiana because a new employee at Global Link "received a call from MOL and was caught off guard." (Email dated March 9, 2006 from Damon Amos to Jim Briles, annexed hereto as Exh. AQ (App. 1493)).

RESPONSE: The CJR Respondents object to paragraph 108 on the grounds that Mr. Amos' e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

109. Mr. Amos advised that he responded to MOL's inquiries about the final destination of its containers as follows:

> **I emailed MOL and explained it was a miscommunication and the containers were to be delivered as booked.** At no point did I ever verbally speak to MOL and I absolutely never told them, or even remotely insinuated, "a container routed to Fishers, IN was not going there mo[s]t times goes somewhere else." Also, please note Mitsui's desire to have empties returned to Indianapolis is not a consequence of their phone conversation with [a preferred trucker] since their desire preceded it. It was simply a matter of supply and demand.

(Exh. AQ. (App. 1493) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 109 on the grounds that Mr. Amos' e-mail is hearsay. To the extent that MOL contends that his e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

110. Global Link's standard operating procedure was to routinely deliver shipments to a destination different from that initially booked with MOL, to consistently provide false documentation and mis-information about the final destination of these shipments, and to actively take steps to conceal the "split routing" scheme. (Exhs. AO (App. 1486), AP (App. 1487) and AQ (App. 1493)).

RESPONSE: The CJR Respondents object to paragraph 110 on the grounds that the e-mails cited therein are hearsay. To the extent that MOL contends that these e-mails are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that, as set forth on pages 13 through 18 of the CJR Respondents' Brief and based on the evidence discussed therein, GLL attempted to keep the practice of split routing hidden from MOL's operations staff at Mr. McClintock and Ms. Yang's encouragement.

Global Link constantly vetted "preferred truckers" in furtherance of "split routing":

111. In order to maintain the fiction that its shipments were being delivered to MOL master bill of lading destinations, Global Link repeatedly sought out inland carriers who would be willing to serve as "preferred truckers" and help advance the "split routing" scheme. (Global Link Voluntary Disclosure (Exh. C) at ¶ 10 (App. 113-14)).

RESPONSE: The CJR Respondents object to paragraph 111 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6.

112. As explained in the Voluntary Disclosure,

> . . . . It was also important for the false routing scheme that Global Link be able to designate its "preferred truckers" to be used by the ocean carriers. **This is because it was necessary to find motor carriers who would be willing to deliver the ocean containers to a different destination than the one shown on the master bill of lading and the carrier's freight release.** A February 8, 2006 email from a Global Link customer account manager to a representative of a motor carrier that was being recruited into the false routing scheme explained the process as follows:
>
> > You will be delivering to Norcross, GA where Brakes USA is located. **What I meant was we book this with P&O as if they were going to Chattanooga, TN but they are not going there. They will be delivered to Norcross, GA. P&O is not supposed to know about Norcross, GA. Please do not mention anything to them.** When you receive the work order or freight release from them, it will show Chattanooga, TN as a delivery destination but you will be delivering to Norcross, GA. **They will be paying you as if they are going from Austell [presumably, the rail ramp location] to Chattanooga, TN. That's where you make your money. We call this "split delivery." If there was a difference in mileage, Global Link Logistics will pay the difference but in this case the mileage is way covered.** Please let me know if this does not make sense to you.
>
> . . . . As this email notes, ocean carriers establish trucking allowances to compensate motor carriers for the drayage of containers from ports or rail ramps to final destinations. If the trucking allowance for the fictional destination would not cover the trucking move to the actual destination, Global Link would pay the motor carrier the difference. **To avoid this, which would obviously reduce Global Link's profit on these shipments, Global Link tried to find cheap destination points with high trucking allowances from the ocean carriers. . . .**

(Exh. C at ¶ 10 (citing Exh. AV) (App. 113-14) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 112 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents'

response to paragraph 6. The CJR Respondents object further on the grounds that the portion of the Voluntary Disclosure cited in paragraph 112 is double hearsay.

113. Global Link carefully vetted motor carriers before agreeing to use them as part of its "split routing" scheme against MOL because they wanted to be certain their truckers would not reveal that the shipments were not being delivered to the master bill of lading destinations. (Email from Jim Briles to Shayne Kemp dated July 27, 2005, annexed hereto as Exh. AR (App. 1494); Email exchange between Wayne Martin and Respondent Rosenberg dated January 30, 2006, annexed hereto as Exh. AS (App. 1495); Email exchange between Erin Brown and Joanne Picardi, Global Link employees, dated July 26, 2005, annexed hereto as Exh. AT (App. 1496)).

RESPONSE: The CJR Respondents object to paragraph 113 on the grounds that the e-mails cited therein are hearsay. To the extent that MOL contends that these e-mails are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

114. Global Link recruited motor carriers explaining that by not delivering shipments to the master bill of lading destinations they stood to make more money through the trucking payment offered by steamship lines. (Email dated February 8, 2006 from Eileen Cakmer of Global Link to Lorne Tritt, annexed hereto as Exh. AV (App. 1498-99)).

RESPONSE: The CJR Respondents object to paragraph 114 on the grounds that Ms. Cakmur's e-mail is hearsay. To the extent that MOL contends that her e-mail is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above.

Respondent Chad Rosenberg was the [ALLEGED] creator, architect and promoter of the "split routing" scheme:

115. Global Link was founded by Respondent Rosenberg in 1997. (Global Link Amended Statement (Exh. AG) at ¶ 24 (App. 1438) and Arbitration Partial Final Award (Exh. A) at 5 (App. 110)).

RESPONSE: The CJR Respondents admit paragraph 115.

116. Respondent Rosenberg was the qualifying individual listed by Global Link in the application filed with the FMC to obtain a license to operate as a non-vessel-operating common carrier. (Rosenberg Dep. (Exh. O) at page 77, line 8-16 (App. 1181)). The qualifying individual represents and warrants his understanding of applicable Commission regulations and requirements. *See* 46 C.F.R. § 515.11.

RESPONSE: The CJR Respondents do not dispute the facts in paragraph 116. However, Mr. Rosenberg's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6.

117. CJR Respondents admit "split routing" involved:

> provid[ing] MOL with a destination other than the ultimate destination of the cargo. CJR and Rosenberg admit that the bill of lading issued by MOL would reflect the destination provided by Global Link."

(CJR Respondents Answer (Exh. P) at 9-10, ¶ G (App. 1195-96)).

RESPONSE: The CJR Respondents admit paragraph 117.

118. Respondent Rosenberg always intended for "rerouting" or "split routing" to mean having a different destination on the ocean or master bill of lading than the house bill of lading. (Rosenberg Dep. (Exh. O) at page 11, line 19—page 12, line 3 and page 12, lines 20-25 (App. 1168-69)).

RESPONSE: The CJR Respondents do not dispute the facts in paragraph 118. However, Mr. Rosenberg's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6.

119. Respondent Rosenberg designed "split routing" so that the shipment would be delivered not to the destination stated on the ocean or master bill of lading, but to the destination stated on the house bill of lading. (Rosenberg Dep. (Exh. O) at page 17, lines 9-22 (App. 1168-69)).

RESPONSE: The CJR Respondents deny paragraph 119. Mr. Rosenberg did not design the practice of split routing. He learned it at other logistics companies and he always understood that it was legal, common in the industry, and known to the ocean carriers. (Rosenberg Dec., at ¶¶ 4-6) (CJR Exh. A) (CJR App., at p. 2). The CJR Respondents show further that Mr. Rosenberg's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6.

120. "Split routing" worked by booking a shipment through an ocean carrier's "regional door point" which typically had the lowest cost point regardless of the shipment's actual destination. (Rosenberg Dep. (Exh. O) at page 37, lines 14-18 (App. 1177)).

RESPONSE: The CJR Respondents do not dispute the facts in paragraph 120. However, Mr. Rosenberg's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6.

121. Since starting Global Link, as a licensed NVOCC, Respondent Rosenberg immediately instituted "split routing" for the majority of its shipments. (Rosenberg Dep. (Exh. O) at page 99, line 12—page 101, line 24 (App. 1182)).

RESPONSE: The CJR Respondents object to paragraph 121 on the grounds that Mr. Rosenberg's deposition in the Arbitration is inadmissible in this proceeding for the

reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents further object on the grounds that the facts alleged in paragraph 121 are not relevant given that Mr. Rosenberg's activities shortly after founding GLL in 1997 do not tend to prove whether he *participated* in routings of MOL shipments between 2004 and 2006. The CJR Respondents also deny any implication that Mr. Rosenberg did anything improper by engaging in the practice of split routing after he founded GLL.

122. Respondent Rosenberg was responsible for "routings" at Global Link. (Joiner Dep. (Exh. BA) at page 170, lines 11-17 (App. 1541)).

RESPONSE: The CJR Respondents deny paragraph 122. Mr. Rosenberg was not actively involved in the day-to-day operations of Global Link during the period relevant to this lawsuit, and Mr. Rosenberg did not play a decision-making role in how to route shipments during that period. (Rosenberg Dec., at ¶¶ 21-39) (CJR Exh. A) (CJR App., at pp. 4-7); (Briles Dec., at ¶¶ 47-48) (CJR Exh. B) (CJR App., at p. 20). The CJR Respondents show further that the deposition of Mr. Joiner in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25. The CJR Respondents show further that although the Award is not admissible, the Panel in the Arbitration found that Mr. Joiner was not credible. (Arbitration Partial Final Award) (MOL's Ex. A, at p. 35) (MOL's App., at p. 35) ("...the Panel does not credit Mr. Joiner, who was fired after less than a year and who appears to have offered himself as a consultant to both sides for compensation").

123. Until selling a majority interest in Global Link to the Olympus Respondents in 2003, Respondent Rosenberg was personally responsible for arranging the specific routings, including the selection of the false final destination on the master bill of lading. (Briles Dep. (Exh. T) at page 114, line 19—page 115, line 1 (App. 1222)).

RESPONSE: The CJR Respondents object to paragraph 123 on the grounds that the deposition of Mr. Briles in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 37. The CJR Respondents further object to paragraph 123 as Mr. Rosenberg's activities with GLL prior to 2003 are not relevant to whether he *participated* in routings of MOL shipments between 2004 and 2006.

124. After selling a majority interest in Global Link to the Olympus Respondents, Respondent Rosenberg personally trained Jim Briles on "split routing." (Briles Dep. (Exh. T) at page 53, line 3-18 (App. 1218) and page 114, line 19—page 115, line 1 (App. 1222).

RESPONSE: The CJR Respondents object to paragraph 124 on the grounds that the deposition of Mr. Briles in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 37. The CJR Respondents show further that whether Mr. Rosenberg trained Mr. Briles on "split routing" is not relevant to whether he *participated* in routings of MOL shipments between 2004 and 2006.

125. CJR Respondents admit that due to "split routing" the "rates paid to MOL for transportation to the location provided to MOL were lower than the rates to the actual location where the shipment was delivered . . . . the location where the shipment was delivered was a point with no negotiated rate in the service contract and which Global Link did not seek to add to the contract." (CJR Respondents Answer (Exh. P) at 11-12, ¶ J (App. 1197-98)).

RESPONSE: The CJR Respondents object to paragraph 125 on the grounds that MOL misstates their response to MOL's allegations in an attempt to mislead the Court. The CJR Respondents answered as follows:

> CJR and Rosenberg deny that allegations contained in paragraph IV. J. of the Complaint as stated. CJR and Rosenberg admit that in some instances in which Global Link re-routed shipments, the rates paid to MOL for transportation to the location provided to MOL were lower than the rates to the actual location where the shipment was delivered, and in other instances, the rates were higher. CJR and Rosenberg further admit that in some but not all instances in which Global Link re-routed shipments, the location where the shipment was delivered was a point with no negotiated rate in the service contract and which Global Link did not seek to add to the contract. CJR and Rosenberg deny that one of the reasons for 're-routing' was to reduce Global Link's costs. CJR and Rosenberg show further that MOL was aware that Global Link engaged in this practice, approved of the practice, and encouraged Global Link to continue the practice due to the impracticality of and administrative burden associated with negotiating a multiplicity of contract points. Answering further, CJR and Rosenberg are without information or knowledge sufficient to form a belief as to the truth of any allegations concerning Global Link's conduct, activities, or business with MOL during the period of time form June 8, 2006 through the present when CJR was not an owner of and Rosenberg was not an officer or director of Global Link. CJR and Rosenberg deny the remaining allegations contained in paragraph IV.J. of the Complaint.

126. Global Link employees knew "split routing" was not commonplace in the industry and did not need an attorney to tell them the practice was illegal. Eric Joiner, a former employee of Global Link, testified as follows:

> Q. . . . . Chad Rosenberg was the individual at the company responsible for handling routings when you were employed by the company, correct?
>
> A. With the exception of the two-week period in which Michelle Roller did it.
>
> Q. Okay, but you didn't have any involvement in that at any time during your employment with the company, correct?
>
> A. No. Absolutely not. Like I said, the way that that worked was Chad would call—and he did this from the start of business. He would call Asia at night from home because of the time differences, which is 12 hours. He would call and talk to them during their business day and from nighttime at his own house. So that activity did not take place within the office.
>
> Q. Did you—did you at that time have any understanding as to why the company, to use your term, misrouted, when it was routing shipments?
>
> A. It would have been an opportunity to try and make more money and achieve new customers. . . . .
>
> Q. Well, what do you base that testimony on? Is that what your understanding was, or is that something that Mr. Rosenberg told you?
>
> A. That's my understanding.
>
> Q. And what do you based that understanding on?
>
> A. Because that's what happens when you do that.
>
> Q. Okay. Mr. Rosenberg never told you that was the reason that it was done, correct?
>
> A. I never had—no. I mean, to be honest, I didn't have to ask. I knew it.
>
> Q. And how did you know it?

A. Well, after 25 years in the business or 20 years at that time, if people are going to use a bullet rate that way, that's what they would have done.

Q. Because it was a common practice in the industry, correct?

A. **No. It was not a common practice. It was an illegal practice.** It happens, okay, and there are people that have gotten FMC fines for having done that, but it's not a practice that I would say is a condoned practice that's an everyday event.

(Joiner Dep. (Exh. BA) at page 170, line 11—page 172, line 19 (App. 1541) (emphasis added)).

RESPONSE: The CJR Respondents deny paragraph 126. Mr. Rosenberg had always understood that the practice of split routing was legal and commonplace in the industry. (Rosenberg Dec., at ¶¶ 4-6) (CJR Exh. A) (CJR App., at p. 2). The CJR Respondents show further that in 2003 the managers of GLL received legal advice from GLL's maritime counsel regarding the practice of split routing. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3). The managers understood counsel's advice to indicate that the practice of split routing was legal but the practice of shortstopping was not. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3). Based on this advice, GLL terminated the practice of shortstopping. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).

The CJR Respondents show further that the deposition of Mr. Joiner in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25. The CJR Respondents show further that the Panel in the Arbitration did not credit Mr. Joiner's testimony. (Arbitration Partial Final Award) (MOL's Ex. A, at p. 35) (MOL's App., at p. 35) ("...the Panel does not credit

Mr. Joiner, who was fired after less than a year and who appears to have offered himself as a consultant to both sides for compensation").

127. Eric Joiner told Respondent Rosenberg that "split routing" was illegal but Mr. Rosenberg continued "split routing" as a practice because—in Mr. Rosenberg's opinion—no one was going to turn Global Link in to the FMC. (Joiner Dep. (Exh. BA) at page 193, line 14—page 194, line 11 (App. 1542-43)).

RESPONSE: The CJR Respondents deny paragraph 127. As discussed in the CJR Respondents' Brief, Mr. Rosenberg had always understood that the practice of split routing was legal and commonplace in the industry. (Rosenberg Dec., at ¶¶ 4-6) (CJR Exh. A) (CJR App., at p. 2). The CJR Respondents show further that in 2003 the managers of GLL received legal advice from GLL's maritime counsel regarding the practice of split routing. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3). The managers understood counsel's advice to indicate that the practice of split routing was legal but the practice of shortstopping was not. (Rosenberg Dec., at ¶¶ 10-11) (Exh. A) (CJR App., at p. 3). Based on this advice, GLL terminated the practice of shortstopping. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).

The CJR Respondents show further that the deposition of Mr. Joiner in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25. The CJR Respondents show further that the Panel in the Arbitration did not credit Mr. Joiner's testimony. (Arbitration Partial Final Award) (MOL's Ex. A, at p. 35) (MOL's App., at p. 35) ("...the Panel does not credit

Mr. Joiner, who was fired after less than a year and who appears to have offered himself as a consultant to both sides for compensation").

Putting aside the admissibility of Mr. Joiner's deposition and Mr. Joiner's lack of credibility, Mr. Joiner's testimony still does not tend to prove that Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents for any shipments at issue in this case.

128. Eric Joiner testified:

> Q. Did you tell Mr. Rosenberg that [split routing was illegal]?
>
> A. **I told Mr. Rosenberg that what was going on wasn't legal.** Okay. I didn't render any legal opinions. **It was like my experience is this is not something you're allowed to do. We need to find a different way to do it.** Okay. A different way to route the cargo correctly that allows us to be competitive as a company.

(Joiner Dep. (Exh. BA) at page 197, lines 2-9 (App. 1543) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 128 on the grounds that the deposition of Mr. Joiner in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25. The CJR Respondents show further that the Panel in the Arbitration did not credit Mr. Joiner's testimony. (Arbitration Partial Final Award) (MOL's Ex. A, at p. 35) (MOL's App., at p. 35) ("...the Panel does not credit Mr. Joiner, who was fired after less than a year and who appears to have offered himself as a consultant to both sides for compensation").

Putting aside the admissibility of Mr. Joiner's deposition and Mr. Joiner's lack of credibility, Mr. Joiner's testimony still does not tend to prove that Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents for any shipments at issue in this case.

129. Respondent Rosenberg, a qualifying individual, was not aware of any written document from Global Link communicating to any of its employees the importance of maintaining compliance with all FMC rules and regulations. (Rosenberg Dep. (Exh. O) at page 294, line 18—page 295, line 2 (App. 1185-86)).

RESPONSE: The CJR Respondents object to paragraph 129 on the grounds that the deposition of Mr. Rosenberg which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents show further that the testimony cited in no way tends to prove that Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents for any shipments at issue in this case.

130. Respondents Rosenberg and Global Link failed to maintain a proper program to ensure Global Link's compliance with FMC rules and regulations. (Rosenberg Dep. (Exh. O) at page 292, line 7—page 295, line 14 (App. 1183-86)).

RESPONSE: The CJR Respondents object to paragraph 130 on the grounds that the deposition of Mr. Rosenberg which was taken in the Arbitration is not admissible in this

proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents show further that the testimony cited in no way tends to prove that Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents for any shipments at issue in this case.

131. Respondent Chad Rosenberg, a qualifying individual, was the trainer-in-chief, creator and architect of the fraudulent scheme known as "split routing." (Joiner Dep. (Exh. BA) at page 197, lines 2-9 (App. 1543); Briles Dep. (Exh. T) at page 52, line 5—page 53, line 11 (App. 1217-18) and Global Link Voluntary Disclosure (Exh. C) at ¶ 14 ("The false routing scheme was used by Global Link from its beginning in 199[7].") (App. 116)).

RESPONSE: The CJR Respondents object to paragraph 131 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents further object on the grounds that Mr. Joiner and Mr. Briles's depositions in the Arbitration are not admissible for the reasons set forth above. The CJR Respondents show further that, given that MOL knew of and encouraged the practice of split routing, the practice was not fraudulent. The CJR Respondents show further that the Voluntary Disclosure as well as the deposition testimony cited in no way tend to prove that Mr. Rosenberg was actually involved with or a participant in any routing decisions or the creation of any shipping documents for any shipments at issue in this case.

Olympus Respondents [ALLEGEDLY] actively participated in "split routing" scheme:

132. Olympus Respondents admit they knew Global Link "engaged in a practice called 'split-routing' . . . ." (Verified Answer of Respondents Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; Louis J. Mischianti; L. David Cardenas and Keith Heffernan to Amended Complaint ("Olympus Respondents Answer") at ¶ 15, annexed hereto as Exh. AW (App. 1508)).

RESPONSE: The CJR Respondents admit paragraph 132.

133. The Olympus Respondents were aware that Global Link engaged in "split routing" on a regular basis. (CJR Respondents Answer (Exh. P) at 9, response to ¶ F (App. 1195)).

RESPONSE: The CJR Respondents admit paragraph 133.

134. Olympus Respondents purchased a majority interest in Global Link on or about April 4, 2003. (Selected Pages from Asset Purchase Agreement by and Among GLL Acquisition, Inc., GLL Holdings, Inc., Global Link Logistics, Inc. and Chad J. Rosenberg dated April 4, 2003, annexed hereto as Exh. BQ (App. 1665-66)).

RESPONSE: The CJR Respondents admit paragraph 134.

135. After joining the new Global Link management team, Mr. Eric Joiner became aware that Global Link was routing shipments to destinations which had not been previously agreed to by the steamship lines. (Joiner Dep. (Exh. BA) at page 32, lines 13-19 (App. 1539)).

RESPONSE: The CJR Respondents do not dispute the facts in paragraph 135. However, Mr. Joiner's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25.

136. During the summer of 2003, someone from the new management team—either Eric Joiner or Gary Meyers—advised Respondent Heffernan that Global Link was booking containers to a different destination on the master bill of lading as compared to the house bill of lading. (Deposition of Keith Heffernan dated September 21, 2008 ("Heffernan Dep.") at page 87, line 25—page 88, line 21 (App. 1522-23); page 89, lines 6-12 (App. 1524); and page 91, line 25—page 92, line 5, annexed hereto as Exh. AX (App. 1525)).

RESPONSE: The CJR Respondents object to paragraph 136 on the grounds that the deposition of Mr. Heffernan which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth with respect to Mr. Rosenberg's deposition in the CJR Respondents' response to paragraph 6.

137. Mr. Joiner also spoke with Respondent Cardenas about the legality of transporting containers to a destination not set forth on the master bill of lading or previously agreed by the steamship line. (Joiner Dep. (Exh. BA) at page 191, lines 12-25 (App. 1542); page 193, line 23—page 194, line 9 (App. 1542-43)).

RESPONSE: The CJR Respondents object to paragraph 137 on the grounds that Mr. Joiner's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25.

138. Mr. Joiner cautioned Respondent Cardenas that Global Link's arranging of container movements to destinations not previously agreed to by the steamship lines was illegal and presented serious regulatory issues. (Joiner Dep. (Exh. BA) at page 193, lines 8-13 and page 196, lines 6-18 (App. 1542-43)).

RESPONSE: The CJR Respondents object to paragraph 138 on the grounds that Mr. Joiner's deposition in the Arbitration is inadmissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25.

139. Respondent Heffernan explained that the reason this information was brought to his and Respondent Cardenas's attention was that Gary Meyers and/or Eric Joiner were getting up to speed on Global Link's business practices, and they had a question about the practice of delivering the cargo to a destination different from what was booked with the

steamship line, and whether this practice was OK. (Heffernan Dep. (Exh. AX) at page 92, lines 10-18 (App. 1525)).

RESPONSE: The CJR Respondents object to paragraph 139 of MOL's Proposed Findings of Fact on the grounds that the deposition of Mr. Heffernan which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth with respect to Mr. Rosenberg's deposition in the CJR Respondents' response to paragraph 6.

140. At the time of being informed of this practice in the summer of 2003, Respondents Heffernan, Cardenas and Mischianti were directors of Global Link. (Heffernan Dep. (Exh. AX) at page 95, lines 8-19 (App. 1529) and Global Link Amended Statement (Exh. AG) at ¶ 35 (App. 1442)).

RESPONSE: The CJR Respondents do not dispute the facts in paragraph 140. However, Mr. Heffernan's deposition in the Arbitration is inadmissible in this proceeding for the reasons with respect to Mr. Rosenberg's deposition in the CJR Respondents' response to paragraph 6.

141. Eric Joiner explained to Respondents Heffernan and Cardenas the nature and extent of Global Link's "split routing" scheme in extensive detail. (Heffernan Dep. (Exh. AX) at page 66, lines 13-15 (App. 1520); Joiner Dep. (Exh. BA) at page 191, lines 12-25 (App. 1542) and Transcript of Deposition of David Cardenas dated August 6, 2008

("Cardenas Dep.") at page 115, line 20—page 116, line 8, annexed hereto as Exh. BE (App. 1610-11)).

RESPONSE: The CJR Respondents object to paragraph 141 on the grounds that the depositions of Mr. Heffernan and Mr. Cardenas which were taken in the Arbitration are not admissible in this proceeding for the reasons set forth with respect to Mr. Rosenberg's deposition in the CJR Respondents' response to paragraph 6. The CJR Respondents further object to paragraph 141 on the grounds that the deposition of Mr. Joiner which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25.

142. Respondent Rosenberg also explained in detail the intricacies of "split routing" to both Respondents Heffernan and Cardenas on at least one occasion in July of 2003. (Rosenberg Dep. (Exh. O) at page 32, line 16—page 33, line 10 (App. 1172-73); page 34, line 24—page 35, line 4 (App. 1174-75) and page 36, line 23—page 37, line 2 (App. 1176-77); and Heffernan Dep. (Exh. AX) at page 66, lines 13-15 (App. 1520)).

RESPONSE: The CJR Respondents object to paragraph 142 on the grounds that the deposition of Mr. Rosenberg which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6. Mr. Heffernan's deposition is not admissible for the same reasons.

143. Mr. Joiner specifically warned Respondent Cardenas that "split routing" was illegal and that Global Link should be trained so that bookings with ocean carriers would be performed properly and in accordance with FMC rules and regulations. (Joiner Dep. (Exh. BA) at page 192, lines 4-23 (App. 1542)).

RESPONSE: The CJR Respondents object to paragraph 143 on the grounds that the deposition of Mr. Joiner which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25.

144. Mr. Joiner obtained approval from Olympus Respondents during the summer of 2003 to hire an outside lawyer, Neal Mayer, to train Global Link personnel about proper routing/booking procedures for containerized cargo. (Joiner Dep. (Exh. BA) at page 192, lines 4-23 (App. 1542)).

RESPONSE: The CJR Respondents object to paragraph 144 on the grounds that the deposition of Mr. Joiner which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 25.

145. On July 15, 2003, Paul Coleman, an attorney with Hoppel, Mayer & Coleman in Washington, D.C., wrote the following legal advice to Gene Mayer, Eric Joiner and Respondent Rosenberg:

> When Global Link changes the ultimate destination and does not inform the ocean carrier, which has issued a bill of lading to another destination

and would have needed to issue a corrected bill of lading to the new destination and adjust the charges for the water/motor movement, there are several problems which Global Link needs to consider. First, if the cargo is damaged or lost enroute to the new destination in the motor carriage portion of the movement, Global Link would have no right to go after the ocean carrier for the loss or damage because the goods are no longer traveling under the ocean carrier's bill of lading which included motor carriage to a certain point, but instead moved under an informal arrangement with the trucker. Global Link then will have to look to the trucker whose resources may not be substantial for compensation, under uncertain terms for claims.

Second, **what occurs sometimes in these arrangements is that the cargo goes to a destination short of its original destination, and the motor carrier has collected more or a different amount from the ocean carrier than it is entitled. This is called "shortstopping"**, with often the shipper receiving from the trucker part or all of the amount saved or getting a credit on a later shipment. **This is a fraud on the ocean carrier who has paid the trucker more than the trucker was entitled, and an illegal rebate to the shipper because any return of compensation to the shipper without being allowed by the ocean carrier's tariff or service contract is a violation of section 10(a)(1) of the Shipping Act.**

Third, **if as you noted in your example, the trucker sometime[s] takes the cargo to a destination beyond the original final destination and Global Link pays the trucker more money, it still may be unlawful under the Shipping Act if this allows Global Link to be charged less by the ocean carrier than it would have charged to that destination,** and as we have noted before, leaves Global Link to look to the motor carrier only in case of loss or damage to cargo. . . . . .

In sum, **a practice of changing destinations without notice to the ocean carrier exposes Global Link to possible Shipping Act violations** but just as importantly, to an uncertain claims procedure in case of loss or damage to the cargo. If the concern is that the ocean carrier will learn the identity of the beneficial cargo owner, it would be better to have the ocean carrier issue a port-to-port bill of lading to Global Link and Global Link issue an intermodal bill and arrange the trucking.

(Email string between Paul Coleman and various Global Link employees, including Respondent Rosenberg dated July 15-21, 2003, annexed hereto as Exh. BP (App. 1663) (emphasis added)).

RESPONSE: The CJR Respondents admit paragraph 145. The CJR Respondents show further that GLL stopped the practice of shortstopping based on Mr. Coleman's advice. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).

146. The Olympus Respondents and CJR Respondents ignored the legal advice of outside counsel, Paul Coleman. (Olympus Respondents' Answering Statement to Global Link's Notice of Arbitration and Amended Statement of Claim dated October 29, 2007 ("Olympus Answering Statement") at 12, paras. 30, 46-51, annexed hereto as Exh. BB (App. 1556, 1562-64), and Global Link's Amended Statement of Claim dated October 17, 2007 in Arbitration ("Global Link Amended Statement") at 12, annexed hereto as Exh. AG (App. 1442)).

RESPONSE: The CJR Respondents deny paragraph 146. The managers of Global Link understood Mr. Coleman's advice to mean that the practice of split routing was legal but the practice of shortstopping was not. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3). Based on this advice, GLL terminated the practice of shortstopping. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).

147. Global Link has explained the rationale of ignoring the advice of Mr. Coleman:

> . . . Cardenas and other principals of Olympus Partners, presumably Heffernan and Mischianti at least, knew what Coleman wrote to [Gene] Meyers and Rosenberg in his emails of July 2003. **But, despite that knowledge and despite Coleman's warning that the FMC had fined others for Rosenberg's longstanding "practice of diverting cargo to**

> **[destinations] other than what's on the original [ocean bill of lading]," the directors of Olympus Partners placed on the Boards of Global Link 2003 and Holdings 2003, including Mischianti, Cardenas and Heffernan (who was licensed as a CPA), permitted Rosenberg to continue it.** Apparently, they agreed with Rosenberg that the "real-life risks" of that longstanding "practice" were not likely enough or severe enough to derail their plans to use their capital to expand Rosenberg's freight-forwarding business and then cash in by selling GLL Holdings 2003 and its subsidiaries to an unwitting buyer.

(Global Link Amended Statement (Exh. AG) at ¶ 35 (App. 1442)).

RESPONSE: The CJR Respondents deny that GLL ignored Mr. Coleman's advice. The CJR Respondents show further that GLL's Amended Statement of Claim is not evidence. To the extent MOL contends the Amended Statement of Claim is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents.

148. Global Link further revealed:

> The purpose of these material misrepresentations was obtaining transportation of container from ports in Asia to destinations in the United States at rates that were less than those the ocean carriers would have rightfully charged under their contracts and tariffs if . . . **officers of Global Link** 2003 had not concealed the true destinations for those shipments. . . .

(Global Link Amended Statement (Exh. AG) at ¶ 43 (App. 1446) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 148 on the grounds that GLL's Amended Statement of Claim is not evidence. To the extent MOL contends the Amended Statement of Claim is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents.

149. Respondents Heffernan and Cardenas understood that "split routing" avoided the necessity of re-negotiating door points with steamship lines, thereby exposing Global Link to higher landed costs on a per shipment basis. (Rosenberg Dep. (Exh. O) at page 49, line 1—page 50, line 1 (App. 1179-80) and page 35, line 5—page 36, line 22 (App. 1175-76)).

RESPONSE: The CJR Respondents object to paragraph 149 on the grounds that Mr. Rosenberg's deposition in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6.

150. Respondents Heffernan and Cardenas also knew that "split routing" could have been eliminated by having Global Link book its shipments to the container yard or rail ramp, rather than a door point. (Rosenberg Dep. (Exh. O) at page 35, lines 15—page 36, line 22 (App. 1175-76)).

RESPONSE: The CJR Respondents object to paragraph 150 on the grounds that Mr. Rosenberg's deposition in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6.

151. Olympus Respondents took no action to terminate or modify Global Link's "split routing" following receipt of Mr. Coleman's advice that such practices were illegal and violated the Shipping Act. (Heffernan Dep. (Exh. AX) at page 163, lines 15-25 (App.

1530); Email string between Paul Coleman, Respondent Chad Rosenberg and Gene Mayer dated July 16, 2003, annexed hereto as Exh. BC (App. 1585-88)).

RESPONSE: The CJR Respondents object to paragraph 151 on the grounds that Mr. Heffernan's deposition in the Arbitration is not admissible in this proceeding for the reasons set forth with respect to Mr. Rosenberg's deposition in the CJR Respondents' response to paragraph 6. The CJR Respondents further deny MOL's characterization of Mr. Coleman's advice. The managers of GLL understood Mr. Coleman's advice to mean that the practice of split routing was legal but the practice of shortstopping was not. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3). Based on this advice, GLL terminated the practice of shortstopping. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).

152. Although they were shareholders, officers and/or directors of Global Link, Olympus Respondents and CJR Respondents neither ensured that the activities of their company—Global Link—conformed to the Shipping Act nor assigned someone the task of compelling Global Link's compliance with its duties and obligations under the Shipping Act. (Heffernan Dep. (Exh. AX) at page 171, line 18—page 174, line 2 (App. 1531-33a); Cardenas Dep. (Exh. BE) at page 52, line 17—page 53, line 13 (App. 1605-06); page 157, line 12—page 158, line 8 (App. 1615-16); page 162, line 17—page 163, line 6 (App. 1617-18); page 166, lines 2-10 (App. 1619)).

RESPONSE: The CJR Respondents object to paragraph 152 on the grounds that Mr. Heffernan and Mr. Cardenas' depositions in the Arbitration are not admissible in this

proceeding for the reasons set forth with respect to Mr. Rosenberg's deposition in the CJR Respondents' response to paragraph 6. The CJR Respondents deny that GLL failed to comply with its duties and obligations under the Shipping Act or that they failed to undertake efforts to ensure GLL did the same. GLL sought and obtained legal advice regarding the legality of split routing in 2003. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3); (MOL's Exh. BP) (MOL's App., at p. 1663-1664). The managers of GLL understood Mr. Coleman's advice to mean that the practice of split routing was legal but the practice of shortstopping was not. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3); (*see also* MOL's Exh. BL) (MOL's App., at p. 1624)) ("It now sounds to me like having the o b/l and h b/l destination different is ok, just not debits and credits."). Based on Mr. Coleman's advice, GLL terminated the practice of shortstopping. (Rosenberg Dec., at ¶¶ 10-11) (CJR Exh. A) (CJR App., at p. 3).[1]

153. Olympus Respondents and CJR Respondents benefitted directly from Global Link's "split routing" scheme. (Global Link's Voluntary Disclosure (Exh. C) at ¶ 14 ("The misrouted shipments actually increased in 2005, the time during which [Olympus and CJR Respondents] were preparing to sell [Global Link]. Increasing the profits from false routings, of course, would increase the value of the company to prospective

[1] While statements by the Panel in the arbitration styled *Global Link Logistics, Inc. et al. v. Olympus Growth Fund III, L.P. et al.*, American Arbitration Association, Case No. 14 125 Y 01447 07 (the "Arbitration"), are not admissible evidence in this proceeding, the Panel's conclusion regarding the advice received by GLL is telling. *See* Partial Final Award in the Arbitration, MOL's Exh. A (MOL's App., at p. 20) ("The advice on legality provided by Coleman and Mayer was explicit on only one subject: the illegality of accepting a rebate or discount from a tracker in the case of 'short-stopping.' As noted above, Global Link ended that practice upon receipt of the advice."); *see also Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., et al.*, FMC No. 09-01, at 76 (FMC Aug. 11, 2011) (Order Denying Appeal Of Olympus Respondents, Granting in Part Appeal of Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motion to Dismiss) (the "August 1, 2011 Commission Order") (Commissioner Khouri, dissenting) ("It is worth noting that Global Link consulted an attorney about the practice and modified its own usage to conform to counsel's advice.").

bidders.") (App. 116) and Cardenas Dep. (Exh. BE) at page 78, line 25—page 80, line 20 (App. 1607-09)).

RESPONSE: The CJR Respondents object to paragraph 153 on the grounds that the Voluntary Disclosure and Mr. Cardenas' deposition are inadmissible for the reasons set forth above.

154. The Olympus Respondents deliberately engaged in the fraudulent practice of split routing in order to inflate profits and defraud the buyers of Global Link. (Transcript of Deposition of Constantine Mihas dated July 11, 2008 ("Mihas Dep.") at page 202, lines 5-15, annexed hereto as Exh. BT (App. 1684)).

RESPONSE: The CJR Respondents deny paragraph 154. The CJR Respondents further object on the grounds that Mr. Mihas' deposition in the Arbitration is inadmissible for the same reasons that Mr. Williford and Mr. Donnini's depositions are inadmissible.

155. In particular, Mr. Mihas, a board member of the new owners of Global Link, testified as follows:

> Q. You understand that the former owners and management of Global Link understood rerouting to be legal and common in the industry?
>
> MR. BUSHOFSKY: Object to the form.
>
> A. No. My understanding is that the former management and owners of the company were deliberately breaking the law in order to inflate profits and defraud us out of $128 million.

(Mihas Dep. (Exh. BT) at page 202, lines 5-15 (App. 1684)).

RESPONSE: The CJR Respondents object to paragraph 155 on the grounds that Mr. Mihas' deposition in the Arbitration is inadmissible for the same reasons that Mr. Williford and Mr. Donnini's depositions are inadmissible.

156. The Olympus Respondents instructed their employees at Global Link not to discuss routing with potential buyers because they did not want anyone outside the company to understand that "split routing," an illegal practice, was essential to Global Link's profitability. (Arbitration Partial Final Award (Exh. A) (App. 23-27) and Transcript of Deposition of Eugene Winters dated July 22, 2008 ("Winters Dep.") at page 62, line 21—page 63, line 11 (App. 1598) and page 63, line 22—page 66, page 16, annexed hereto as Exh. BD (App. 1598-99)).

RESPONSE: The CJR Respondents deny paragraph 156. The CJR Respondents further object to paragraph 156 on the grounds that the Award is inadmissible and collateral estoppel does not apply for the reasons set forth in the CJR Respondents' response to paragraph 22. The CJR Respondents further object to paragraph 156 on the grounds that Mr. Winters' deposition in the Arbitration is inadmissible for the same reasons that Ms. Ivy and Mr. Briles's depositions are inadmissible.

157. The Partial Final Award in the arbitration concluded as follows with regard to the conduct of the Olympus Respondents and CJR Respondents on split routing:

a deliberate effort was made to keep [the buyers of Global Link] from learning of the existence, extent and significance of the split-routing practice during the due diligence process, and (ii) during the due diligence process questions were asked by representatives of [the buyers of Global Link] to which accurate and complete answers would have included disclosure and a description of split routing and its contribution to Global Link's profitability. We turn to a discussion of the evidence underlying those conclusions.

During preparation of the Confidential Information Memorandum, Keith Heffernan, who was responsible for gathering and passing along to Harris Williams comments from Olympus Partners and Global Link management on the most recent draft, deleted a reference to "highly efficient routing." Inserted in place of that phrase was the following comment explaining the deletion:

"**I don't think we should get too deep into routing. I don't think we want too much diligence around this, and we don't want to give away too much either. I would stick to high-skilled contract negotiations.**"

* * * *

The motivation to conceal Global Link's reliance on split-routing is not difficult to identify. The Olympus Respondents were eager to turn a profit on their three-year-old investment in Global Link by reselling the Company. Chad Rosenberg, having sold an 80% interest in the Company for $20 million three years earlier, stood to reap another $20 million by selling his remaining 20% interest, and Company management was willing, if not eager, to assist the process, for certain members of management stood to benefit personally and substantially from a sale. **Disclosure of split-routing would almost certainly have generated questions about legality, business prudence and/or sustainability of the practice, and responding to those questions by [the buyers of Global Link]'s satisfaction might well have delayed (and conceivably might have scuttled) the transaction or altered its terms to the [Olympus and CJR Respondents]'s and management's detriment.**

(Arbitration Partial Final Award (Exh. A) (App. 23-27) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 157 on the grounds that the Award is inadmissible and collateral estoppel does not apply for the reasons set forth in paragraph 22 of the CJR Respondents' response. The CJR Respondents show further that, while the Award is not admissible, the Panel concluded that MOL knew of and

approved the practice of split routing: "As for the carriers' knowledge, there is clear evidence that a senior sales representative of Mitsui knew that Global Link was engaged in split-routing, and Mitsui did not object – indeed, Mitsui encouraged continuation of the practice – because Mitsui preferred not to be bothered with negotiating a multiplicity of door points." (MOL's Exh. A) (MOL's App., at p. 10).

"Split routing" increased Global Link's revenue at the expense of MOL and other Steamship Lines:

158. Global Link engaged in "split routing" in order to make more money at the expense of MOL and other ocean carriers. (Ivy Dep. (Exh. V) at page 27, lines 4-6 (App. 1252)).

RESPONSE: The CJR Respondents object to paragraph 158 on the grounds that the deposition of Ms. Ivy in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 21. The CJR Respondents show further that GLL engaged in the practice of split routing with MOL's knowledge and at Mr. McClintock and Ms. Yang's encouragement. (Rosenberg Dec., at ¶¶ 36-52) (CJR Exh. A) (CJR App., at pp. 6-9); (Briles Dec., at ¶¶ 8-26, 30-46, 56, 58) (CJR Exh. B) (CJR App., at pp. 14-16, 17-20, 22, 23).

159. Global Link engaged in "split routing" not because it made operations more efficient or avoided administrative tasks, but because it was highly profitable. Indeed, as stated by David Donnini, a principal of the new owners of Global Link, "split routing"

was central to the company's "financial viability." (Donnini Dep. (Exh. BS) at page 63, line 3—page 65, line 2 (App. 1675-77)).

RESPONSE: The CJR Respondents object to paragraph 159 on the grounds that Mr. Donnini's deposition in the Arbitration is inadmissible for the reasons set forth above. To the extent that MOL contends Mr. Donnini's statements are admissible as admissions by GLL, GLL's admissions are not binding on the CJR Respondents for the reasons set forth above. The CJR Respondents show further that GLL engaged in the practice of split routing with MOL's knowledge and at Mr. McClintock and Ms. Yang's encouragement. (Rosenberg Dec., at ¶¶ 36-52) (CJR Exh. A) (CJR App., at pp. 6-9); (Briles Dec., at ¶¶ 8-26, 30-46, 56, 58) (CJR Exh. B) (CJR App., at pp. 14-16, 17-20, 22, 23).

160. The Arbitration Partial Final Award confirmed that Global Link's costs per container were significantly reduced as a result of "split routing" and estimated that Global Link's gross earnings improved roughly between $5.9 million and $9.7 million for a single calendar year ending on May 31, 2006. (Exh. A (App. 21-22)).

RESPONSE: The CJR Respondents object to paragraph 160 on the grounds that the Award is inadmissible and collateral estoppel does not apply for the reasons set forth in the CJR Respondents' response to paragraph 22. The CJR Respondents show further that, while the Award is not admissible, the Panel concluded that MOL knew of and approved the practice of split routing: "As for the carriers' knowledge, there is clear evidence that a senior sales representative of Mitsui knew that Global Link was engaged

in split-routing, and Mitsui did not object – indeed, Mitsui encouraged continuation of the practice – because Mitsui preferred not to be bothered with negotiating a multiplicity of door points." (MOL's Exh. A) (MOL's App., at p. 10).

161. The Arbitration Partial Final Award confirmed that Global Link's purpose in engaging in "split routing" was "[t]o lower its costs and thereby increase its profits where competitive and attractive ocean carrier rates were not available to a particular destination. . . ." (Exh. A (App. 8)).

RESPONSE: The CJR Respondents object to paragraph 161 on the grounds that the Award is inadmissible and collateral estoppel does not apply for the reasons set forth in the CJR Respondents' response to paragraph 22. The CJR Respondents show further that, while the Award is not admissible, the Panel concluded that MOL knew of and approved the practice of split routing: "As for the carriers' knowledge, there is clear evidence that a senior sales representative of Mitsui knew that Global Link was engaged in split-routing, and Mitsui did not object – indeed, Mitsui encouraged continuation of the practice – because Mitsui preferred not to be bothered with negotiating a multiplicity of door points." (MOL's Exh. A) (MOL's App., at p. 10).

162. Global Link acknowledged that "split routing" resulted in a lower landed cost which resulted, in turn, in higher profit margins. (Briles Dep. (Exh. T) at page 80, lines 3-6 ("Q. . . . . Do lower landed costs support higher margins? A. Sure.") (App.1220)).

RESPONSE: The CJR Respondents object to paragraph 162 on the grounds that Mr. Briles's deposition in the Arbitration is not admissible in this case for the reasons set forth in the CJR Respondents' response to paragraph 37.

163. Global Link admitted:

> **The purpose of these material misrepresentations was obtaining transportation of container from ports in Asia to destinations in the United States at rates that were less than those the ocean carriers would have rightfully charged under their contracts and tariffs if . . . Rosenberg . . . had not concealed the true destinations for those shipments. . . .**

(Exh. AG at 16, ¶ 43 (Global Link's Amended Statement of Claim dated October 17, 2007 in Arbitration) (App. 1446) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 163 on the grounds that GLL's Amended Statement of Claim is not evidence. To the extent MOL contends the Amended Statement of Claim is admissible as an admission by GLL, GLL's admissions are not binding on the CJR Respondents.

Respondents' [ALLEGED] concealment of "split routing" precluded MOL's prior knowledge of the scheme:

164. As demonstrated by the eight sample shipments, "split routing" was a labor intensive system consisting of many individual components. (Exhs. W-AD (eight sample shipments) (App. 1260-1428)).

RESPONSE: The CJR Respondents deny that the practice of split routing was "labor intensive". The CJR Respondents also reiterate their objections to the sampling procedure.

165. Global Link's own employees did not like carrying out the "split routing" scheme because it required them to create additional documents and to be extra careful in the manner in which they drafted these documents. In other words, maintenance of "split routing" created additional work. (Ivy Dep. (Exh. V) at page 23, line 21—page 24, line 24 (App. 1251)).

RESPONSE: The CJR Respondents object to paragraph 165 on the grounds that Ms. Ivy's deposition in the Arbitration is inadmissible for the reasons set forth above.

166. In particular, Dee Ivy of Global Link testified as follows:

> Q. When did [Shayne Kemp] tell you about splits when she first told you about them?
>
> A. Well, she basically explained to me that the way Global Link routes their containers, that what a split shipment meant was we routed the container to, say, Chicago with the steamship line, but the customer that it was delivered to is actually in Indiana.
>
> So we would have to prepare one delivery order to the carrier showing the Chicago final destination and prepare a second delivery order to whatever trucker we were using showing the Indiana final destination, and that the reason we did these types of split shipments was because the company made more money doing it this way.
>
> **She also expressed that it's always a hassle, which it was, to do the split shipments, because, one, it created double work for the CAMs**

[customer account managers] because we had to prepare two delivery orders, and the truckers would always call, and if you forgot and sent the wrong delivery order to the wrong person, then you'd have to your, "Oh, yeah, you're right, I meant to send you Chicago instead of Indiana," that type of thing. So all the CAMs, when I started, **it was pet peeve of all of the CAMs that we were doing split shipments.**

But again, it was explained to me that we routed that way because we made more money routing that way.

* * * *

Q. When you say it's not right, do you mean ethically, legally, morally?

A. Ethically.

Q. Ethically?

A. At the least, yes.

Q. Did it make you uncomfortable?

A. Yes, at the point where the truckers are calling, or the steamship line, if we put the wrong zip code or the wrong address, the steamship line will call and question. **That's where I started to get uncomfortable, because the CAMs were put in a position where we were forced to lie to the steamship line by telling them the container was going somewhere that it wasn't.**

(Ivy Dep. (Exh. V) at page 21, line 3—page 24, line 24 (App. 1250-51) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 166 on the grounds that Ms. Ivy's deposition in the Arbitration is inadmissible for the reasons set forth above. Ms. Ivy's testimony regarding Ms. Kemp's statements is also double hearsay.

167. As demonstrated by the various admissions by Global Link and its employees, "split routing" required constant pruning and cultivation to: (i) book to false or fictitious

destinations with favorable freight rates; (ii) accurately draft and issue duplicate transportation documents—with slight differences in addresses, telephone numbers—in order avoid suspicion from steamship lines, like MOL; (iii) properly juggle inquiries from both truckers and ocean carriers as to the "correct" false and actual final destinations; and (iv) calculate the proper trucking costs in comparison to the ocean carrier's trucker payment which was based upon the booked destination. (Global Link Voluntary Disclosure (Exh. C) (App. 109-20)).

RESPONSE: The CJR Respondents object to paragraph 167 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6.

168. Global Link's efforts in maintaining the "split routing" scheme were extraordinary and extensive. (Global Link Voluntary Disclosure (Exh. C) (App. 109-20)).

RESPONSE: The CJR Respondents object to paragraph 168 on the grounds that the Voluntary Disclosure is inadmissible for the reasons set forth in the CJR Respondents' response to paragraph 6.

169. Global Link would not have concealed "split routing" from MOL if MOL had understood, condoned or participated the scheme. (Rosenberg Dep. (Exh. O) at page 17, lines 13-22 (App. 1170)).

RESPONSE: The CJR Respondents object to paragraph 169 on the grounds that the deposition of Mr. Rosenberg which was taken in the Arbitration is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 6. The CJR Respondents further object to paragraph 169 on the grounds that the testimony cited by MOL does not support MOL's proposed finding. The CJR Respondents show further that MOL knew of and encouraged GLL's practice of split routing. (Rosenberg Dec., at ¶¶ 36-52) (CJR Exh. A) (CJR App., at pp. 6-9); (Briles Dec., at ¶¶ 8-26, 30-46, 56, 58) (CJR Exh. B) (CJR App., at pp. 14-16, 17-20, 22, 23).

170. "Split routing," as implemented by Global Link, did not benefit MOL. To the contrary, the scheme caused MOL to incur substantial monetary damages.

171. **RESPONSE**: The CJR Respondents deny paragraph 170. MOL did not suffer any damages as a result of the practice of split routing. (Rosenberg Dec., at ¶¶ 56-66) (CJR Exh. A) (CJR App., at pp. 9-11); (McClintock Dep. at pp. 13:22-14:6, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 88-89, 100-101). To the contrary, the practice of split routing benefitted MOL. (McClintock Dep., at pp. 14:7-20:9) (CJR Exh. I) (CJR App., at pp. 89-95).

Global Link [ALLEGEDLY] continued to defraud MOL and other ocean carriers after discovery of the illegal "split routing" practice:

172. Although the new owners of Global Link were advised by Eileen Cakmur on July 16, 2006—shortly after closing—that Global Link regularly engaged in illegal "split

routing" (Exh. Q (App. 1206)), Global Link continued to engage in "split routing" for almost an entire year until May of 2007. (Arbitration Partial Final Award (Exh. A) (App. 14-15)).

RESPONSE: The CJR Respondents object to paragraph 171 on the grounds that the Award is not admissible in this proceeding for the reasons set forth in the CJR Respondents' response to paragraph 22. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6).

173. Global Link did not immediately cease the illegal "split routing" practice because of the negative financial impact to the company. (Donnini Dep. (Exh. BS) at page 64, line 17—page 65, line 2 (App. 1676-77) and Transcript of Deposition of John Rocheleau dated July 16, 2008 ("Rocheleau Dep.") at page 240, line 21—page 241, line 14, annexed hereto as Exh. BU (App. 1692-93)).

RESPONSE: The CJR Respondents object to paragraph 172 on the grounds that Mr. Donnini and Mr. Rochelau's depositions in the Arbitration are not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6).

174. Global Link determined the illegal practice of "split routing" was too lucrative to stop immediately without ceasing to do business as an on-going concern. (Mihas Dep. (Exh. BT) at page 38, line 22—page 39, line 23 (App. 1681-82). *See* ¶ 160, *supra* (Global Link's gross earnings improved by $5.9 to $9.7 million in one calendar year due to split routing).

RESPONSE: The CJR Respondents object to paragraph 173 on the grounds that Mr. Mihas' deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with Global Link following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6).

175. In particular, Mr. Mihas—a board member of Global Link's new owners—testified as follows:

> Q. Sir, why did the board not instruct management to stop this illegal practice immediately?
>
> A. The practice was complex and required time to evaluate just how we were going to unwind all of the illegal practices. It was not something that could be practicably or responsibly eliminated the next day.
>
> Q. Do you have any understanding of how it was complex?
>
> A. Not specifically.
>
> Q. Do you have a general understanding of how it was complex?

A. Yes.

Q. Can you give us -- can you explain that understanding?

A. **There are thousands of containers that are shipped on a weekly basis and they go to a lot of different destinations and are on many different carriers, and the illegal practices were interwoven throughout numerous carriers, numerous destinations, numerous trucking firms, and the practice was rampant in the organization and trying to eliminate it in one fell swoop was complex without effectively turning the lights off on the company the next day.**

(Mihas Dep. (Exh. BT) at page 38, line 22—page 39, line 23 (App. 1681-82) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 174 on the grounds that Mr. Mihas' deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6).

176. While Global Link continued to engage in "split routing", Global Link was aware that it continued to defraud ocean carriers. (Mihas Dep. (Exh. BT) at page 43, lines 10-25 (App. 1683)).

RESPONSE: The CJR Respondents object to paragraph 175 on the grounds that Mr. Mihas' deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any

involvement with Global Link following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6).

177. In particular, Mr. Mihas testified as follows:

> Q. **Mr. Mihas, you testified a little bit ago that you believed the practice of split routing defrauded ocean carriers, correct?**
>
> A. **Correct.**
>
> Q. All right. And split routing, as GLL continued to practice it after the board learned of the practice, also defrauded ocean carriers, didn't it?
>
> A. For some period of time while we were getting out of the practice.
>
> Q. **Until you stopped split routing entirely, GLL continued to defraud ocean carriers?**
>
> A. **For the period of time that we were getting ourselves out of it, yes.**

(Mihas Dep. (Exh. BT) at page 43, lines 10-25 (App. 1683) (emphasis added)).

RESPONSE: The CJR Respondents object to paragraph 176 on the grounds that Mr. Mihas' deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6).

178. Global Link continued to engage in "split routing" even though "split routing" constituted "lying" to ocean carriers or perpetrating a "fraud" upon ocean carriers. (Rocheleau Dep. (Exh. BU) at page 240, lines 9-19 (App. 1692).

RESPONSE: The CJR Respondents object to paragraph 177 on the grounds that Mr. Rochelau's deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6). The CJR Respondents deny that GLL ever perpetrated a fraud on MOL or any other ocean carriers.

179. While Global Link continued to engage in "split routing," Global Link knew it was causing damages to ocean carriers. (Mihas Dep. (Exh. BT) at page 323, line 21—page 324, line 18 (App. 1686-87)).

RESPONSE: The CJR Respondents object to paragraph 178 on the grounds that Mr. Mihas' deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with Global Link following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6). The CJR Respondents deny that the

practice of split routing caused MOL any damages. (Rosenberg Dec., at ¶¶ 56-66) (CJR Exh. A) (CJR App., at pp. 9-11); (McClintock Dep. at pp. 13:22-14:6, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 88-89, 100-101).

180. In particular, Mr. Mihas testified as follows:

> Q. Why -- if the ocean carrier believes they've been defrauded by Global Link, they have a claim against Global Link. Now, they can approach Global Link and say, You owe us this amount of money. Now, you can come back to them and say, We don't have any money, you know, go jump in the lake. But the ocean carriers haven't done that, have they?
>
> MR. BUSHOFSKY: Object to the form.
>
> A. As far as I know they haven't yet. I wouldn't be surprised if they did.
>
> Q. They haven't done so because they haven't been damaged by the practice at all?
>
> MR. BUSHOFSKY: Object to the form. I think he answered that question already.
>
> A. I think it's pretty clear they've been damaged by the practice. If we had told them the appropriate destinations, we clearly would have paid them more. So I think there are millions and millions of dollars of damages they've suffered for many years.

(Mihas Dep. (Exh. BT) at at page 323, line 21—page 324, line 18 (App. 1686-87)).

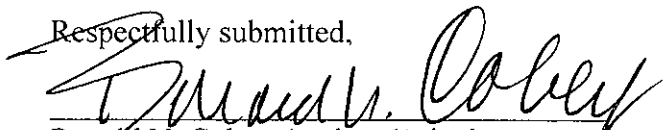
RESPONSE: The CJR Respondents object to paragraph 179 on the grounds that Mr. Mihas' deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶

30-35) (CJR Exh. A) (CJR App., at p. 6). The CJR Respondents deny that the practice of split routing caused MOL any damages. (Rosenberg Dec., at ¶¶ 56-66) (CJR Exh. A) (CJR App., at pp. 9-11); (McClintock Dep. at pp. 13:22-14:6, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 88-89, 100-101).

181. Having continued to engage in "split routing," Global Link understood ocean carriers may elect to pursue recovery of its damages from Global Link. (Rochelcau Dep. (Exh. BU) at page 262, line 7—page 263, line 22 ("And in the end, I think the [ocean] carriers will be happy that we stopped this practice because now they are making the money that they weren't making before [due to split routing]. If they want to come after [Global Link] for damages, they can do that.") (App. 1693-93a)).

RESPONSE: The CJR Respondents object to paragraph 180 on the grounds that Mr. Rochelau's deposition in the Arbitration is not admissible in this proceeding for the reasons set forth above. The CJR Respondents show further that they did not have any involvement with GLL following the sale on June 7, 2006, and are therefore without information or knowledge as to GLL's conduct after that date. (Rosenberg Dec., at ¶¶ 30-35) (CJR Exh. A) (CJR App., at p. 6). The CJR Respondents deny that the practice of split routing caused MOL any damages. (Rosenberg Dec., at ¶¶ 56-66) (CJR Exh. A) (CJR App., at pp. 9-11); (McClintock Dep. at pp. 13:22-14:6, 264:15-265:10) (CJR Exh. I) (CJR App., at pp. 88-89, 100-101).

Respectfully submitted,



Ronald N. Cobert (rcobert@gjcobert.com)
Andrew M. Danas (adanas@gjcobert.com)
GROVE, JASKIEWICZ and COBERT, LLP
1101 17th Street, N.W., Suite 609
Washington, D.C. 20036

Benjamin I. Fink (bfink@bfvlaw.com)
Neal F. Weinrich (nweinrich@bfvlaw.com)
BERMAN FINK VAN HORN P.C.
3475 Piedmont Rd., Suite 1100
Atlanta, Georgia 30305
Tel: (404) 261-7711
Fax: (404) 233-1943

Attorneys for Respondents CJR World Enterprises, Inc. and Chad Rosenberg

Dated: March 1, 2013

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2013, I have this day served the foregoing document upon the following individual(s):

David Street (dstreet@gkglaw.com)
Brendan Collins (bcollins@gkglaw.com)
GKG Law, PC
1054 31st Street, Ste. 200
Washington, D.C. 20007
(via electronic mail and hand delivery)

Attorneys for Respondent Global Link Logistics, Inc.

Marc J. Fink (mfink@cozen.com)
Cozen O'Connor
1627 I Street, N.W., Suite 1100
Washington, D.C. 20006
(via electronic mail and hand delivery)

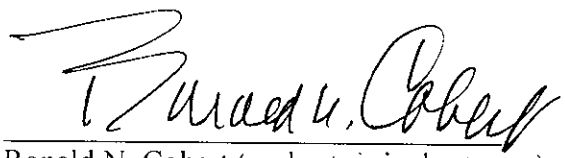
David Y. Loh (dloh@cozen.com)
Cozen O'Connor
45 Broadway Atrium, Suite 1600
New York, NY 10006-3792
(via electronic mail and Federal Express)

Attorneys for Complainant Mitsui O.S.K. Lines, Ltd.

Warren L. Dean (wdean@thompsoncoburn.com)
C. Jonathan Benner
(jbenner@thompsoncoburn.com)
Harvey Levin (hlevin@thompsoncoburn.com)
Kathleen E. Kraft (kkraft@thompsoncoburn.com)
Thomson Coburn LLP
1909 K Street, N.W., Ste. 600
Washington, D.C. 20006
(via electronic mail and hand delivery)

Andrew G. Gordon (agordon@paulweiss.com)
Paul Weiss Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(via electronic mail and Federal Express)

Attorneys for Respondents Olympus Partners, L.P., Olympus Growth Fund III, L.P.; Olympus Executive Fund, L.P.; Louis J. Mischianti; David Cardenas and Keith Heffernan



Ronald N. Cobert (rcobert@gjcobert.com)
Andrew M. Danas (adanas@gjcobert.com)
GROVE, JASKIEWICZ and COBERT, LLP
1101 17th Street, N.W., Suite 609
Washington, D.C. 20036

Attorneys for Respondents CJR World Enterprises, Inc. and Chad Rosenberg